

**PENNINE CARE NHS FOUNDATION TRUST**  
**FOUNDATION TRUST CONSTITUTION**

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April 2011

Pennine Care NHS Foundation Trust Constitution

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## 1. Interpretation and Definitions

Unless otherwise stated, 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.

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.

## 2. Name

The name of the Foundation Trust is Pennine Care NHS Foundation Trust (the trust).

## 3. Principal purpose

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

## 4. Powers

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

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

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

## 5. Membership and constituencies

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

**5.1** a public constituency

**5.2** a staff constituency

## **6. Application for membership**

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

## **7. Public Constituency**

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

## **8. Staff Constituency**

- 8.1** An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:
  - 8.1.1** he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2** he has been continuously employed by the trust under a contract of employment for at least 12 months.
- 8.2** Individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the staff constituency.
- 8.4** The staff constituency shall be divided into 5 descriptions of individuals who are eligible for membership of the staff constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the staff constituency.
- 8.5** The minimum number of members in each class of the staff constituency is specified in Annex 2.

## **Automatic membership by default - staff**

**8.6** An individual who is:

**8.6.1** eligible to become a member of the Staff Constituency,  
and

**8.6.2** 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.

## **9. Restriction on Membership**

**9.1** An individual who is a member of a constituency, or of a class within a  
constituency, may not while membership of that constituency or class  
continues, be a Member of any other constituency or class.

**9.2** An individual who satisfies the criteria for membership of the Staff  
Constituency may not become or continue as a member of any  
constituency other than the Staff Constituency.

**9.3** Further provisions as to the circumstances in which an individual may  
not become or continue as a member of the trust are set out in Annex 9  
– Further Provisions.

## **10. Council of Governors – Composition**

**10.1** The trust is to have a Council of Governors, which shall comprise both  
elected and appointed governors.

**10.2** The composition of the Council of Governors is specified in Annex 3.

**10.3** The Members of the Council of Governors, other than the appointed  
members, shall be chosen by election by their constituency or, where  
there are classes within a constituency, by their class within that  
constituency. The number of governors to be elected by each  
constituency, or, where appropriate, by each class of each  
constituency, is specified in Annex 3.

## **11. Council of Governors - election of governors**

**11.1** Elections for elected members of the Council of Governors shall be  
conducted in accordance with the Model Election Rules.

**11.2** The Model Election Rules as published from time to time by the  
Department of Health form part of this constitution. The Model Election

Rules current at the date of the trust's Authorisation are attached at Annex 5.

**11.3** A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 40 of the constitution (amendment of the constitution).

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

## **12. Council of Governors - tenure**

**12.1** An elected governor may hold office for a period of up to 3 years.

**12.2** 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.

**12.3** An elected governor shall be eligible for re-election at the end of his term.

**12.4** An appointed governor may hold office for a period of up to 3 years.

**12.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

**12.6** An appointed governor shall be eligible for re-appointment at the end of his term.

## **13. Council of Governors – disqualification and removal**

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

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

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

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

**13.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.

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

**14. Council of Governors – meetings of Governors**

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

**14.2** Meetings of the Council of Governors shall be open to the public. Members of the public may be excluded from a meeting for special reasons.

**15. Council of Governors - standing orders**

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

**16. Council of Governors - conflicts of interest of Governors**

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the 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.

**17. 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.

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

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

**19. Board of Directors – composition**

**19.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

**19.2** The Board of Directors is to comprise:

**19.2.1** a non-executive Chairman

**19.2.2** not less than five other non-executive directors; and

**19.2.3** not less than five executive directors

**19.3** One of the executive directors shall be the Chief Executive.

**19.4** The Chief Executive shall be the Accounting Officer.

**19.5** One of the executive directors shall be the Director of Finance.

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

**19.7** One of the executive directors is to be a registered nurse or a registered midwife.

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

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

**20.1** he is a member of the Public Constituency, and

**20.2** he is not disqualified by virtue of paragraph 26 below.

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

**21.1** The 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.

**21.2** The removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

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

**22. Board of Directors – Appointment of Initial Chairman and other Non-Executive Directors**

- 22.1** The Council of Governors shall appoint the chairman of the applicant NHS Trust as the initial chairman of the trust, if he wishes to be appointed.
- 22.2** 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.
- 22.3** The criteria for qualification for appointment as a non-executive director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with procedures set out in this paragraph.
- 22.4** An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as chairman or (as the case may be) non-executive director of the trust but if, upon appointment, that period is less than 12 months, he shall be appointed for 12 months.

**23. 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.

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

- 24.1** The non-executive directors shall appoint or remove the Chief Executive.
- 24.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 24.3** The initial Chief Executive is to be appointed in accordance with paragraph 25 below.
- 24.4** A committee consisting of the Chairman, Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

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

**25.1** The non-executive directors shall appoint the chief officer of the trust as the initial Chief Executive of the trust, if he wishes to be appointed.

**25.2** 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.

**26. Board of Directors - disqualification**

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

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

**26.2** a person who has made a composition or arrangements with, or granted a Trust deed for, his creditors and has not been discharged in respect of it.

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

**26.4** Further provisions as to the circumstances in which an individual may not become or continue as a director of the Trust are set out in Annex 9.

**27. Board of Directors – standing orders**

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

**28. Board of Directors – conflicts of interests 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.

## **29. Board of Directors - remuneration and terms of office**

- 29.1** 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.
- 29.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

## **30. Registers**

The trust shall have:

- 30.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 30.2** a register of members of the Council of Governors
- 30.3** a register of interests of the Council of Governors
- 30.4** a register of directors; and
- 30.5** a register of interests of the directors

## **31. Admission to and removal from the Registers**

The Chief Executive or his nominated officer shall:-

- 31.1** admit to the Members Register the name and constituency of a member upon receipt of a declaration from the member confirming their eligibility as a member;
- 31.2** remove from the Members Register any member who is no longer eligible to be a member or indicates in writing that they no longer wish to be a member or upon receipt of a notice to that effect from the member's next of kin or personal representative that the member has died;
- 31.3** admit to the Register of Governors the name and constituency of those members who have been elected or appointed as a Governor to the Foundation Trust;
- 31.4** remove from the Register of Governors those governors who have not been re-elected or who have had their sponsorship withdrawn, notice having been given to the Foundation Trust Secretary to that effect;
- 31.5** maintain the respective Registers of Interests of Directors and Governors and undertake a review of the same at least once in every year by notice to that effect to all Directors and Governors.

## **32. Registers - inspection and copies**

- 32.1** 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.
- 32.2** 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.
- 32.3** So far as the registers are required to be made available:
- 32.3.1** they are to be available for inspection free of charge at all reasonable times; and
  - 32.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract
- 32.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

## **33. Documents available for public inspection**

- 33.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 33.1.1** a copy of the current constitution;
  - 33.1.2** a copy of the current authorisation;
  - 33.1.3** a copy of the latest annual accounts and of any report of the auditor on them;
  - 33.1.4** a copy of the latest annual report;
  - 33.1.5** a copy of the latest information as to its forward planning; and
  - 33.1.6** a copy of any notice given under section 52 of the 2006 Act.
- 33.2** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 33.3** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

**34. Auditor**

**34.1** The trust shall have an auditor.

**34.2** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

**35. Audit Committee**

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

**36. Accounts**

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

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

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

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

**37. Annual report and forward plans**

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

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

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

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

**38. Meeting of the 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.

**38.1** the annual accounts

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

**38.3** the annual report.

**39. Instruments**

**39.1** The trust shall have a seal

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

**40. Amendment of the constitution**

**40.1** Amendments by the trust of its constitution are to be made with the approval of Monitor. For the avoidance of doubt, any amendments to the annexes attached to this constitution must also be approved by Monitor.

## **ANNEX 1 - THE PUBLIC CONSTITUENCY**

The Trust has 6 areas for a Public Constituency. Each is based upon a Local Authority electoral area or combination of two or more such areas.

Each constituency shall comprise a minimum of 100 members.

The constituency areas are covered by:

- Bury – the electoral area covered by Bury Council
- Oldham – the electoral area covered by Oldham Metropolitan Borough Council
- Heywood, Middleton & Rochdale - the electoral area covered by Rochdale Metropolitan Borough Council
- Stockport - the electoral area covered by Stockport Metropolitan Borough Council
- Tameside & Glossop- the electoral area covered by Tameside Metropolitan Borough Council and Derbyshire County Council
- Rest of England

## ANNEX 2 - THE STAFF CONSTITUENCY

The Staff Constituency is divided into 5 classes as follows:

- i) Allied Health Professionals
- ii) Corporate & Support
- iii) Medical & Dental
- iv) Nursing
- v) Social Care

Each class shall comprise a minimum of 20% of the total number of staff in that class, as follows:

<b>Class</b>	<b>Minimum membership</b>
Allied Health Professionals	154
Corporate & Support	275
Medical & Dental	33
Nursing	573
Social Care	48

### ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors is structured as follows:

<b>Elected Governors (Public)</b>	
<b>CONSTITUENCY</b>	<b>NUMBER OF SEATS</b>
Bury	4
Oldham	4
Heywood, Middleton & Rochdale	4
Stockport	4
Tameside & Glossop	4
Rest of England	1

<b>Elected Governors (Staff)</b>	
<b>CLASS</b>	<b>NUMBER OF SEATS</b>
Allied Health Professionals	2
Corporate and Support	2
Medical & Dental	1
Nursing	2
Social Care	1

<b>Appointed Governors</b>	
<b>ORGANISATION</b>	<b>NUMBER OF SEATS</b>
Bury PCT	1
Heywood, Middleton & Rochdale PCT	1
Oldham PCT	1
Stockport PCT	1
Tameside & Glossop PCT	1
Bury Council	1
Oldham MBC	1
Rochdale MBC	1
Stockport MBC	1
Tameside MBC	1
Derbyshire CC	1
<b>TOTAL</b>	<b>40</b>

## ANNEX 4 - THE MODEL RULES FOR ELECTIONS

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### ***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. Arrangements for counting of the votes

37. The count

38. Rejected ballot papers

39. Equality of votes

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

40. Declaration of result for contested elections

41. Declaration of result for uncontested elections

***Part 8 – Disposal of documents***

42. Sealing up of documents relating to the poll
43. Delivery of documents
44. Forwarding of documents received after close of the poll
45. Retention and public inspection of documents
46. Application for inspection of certain documents relating to election

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

47. Countermand or abandonment of poll on death of candidate

***Part 10 – Election expenses and publicity***

*Expenses*

48. Expenses incurred by candidates
49. Expenses incurred by other persons
50. Personal, travelling, and administrative expenses

*Publicity*

51. Publicity about election by the corporation
52. Information about candidates for inclusion with voting documents
53. Meaning of “for the purposes of an election”

***Part 11 – Questioning elections and irregularities***

54. Application to question an election

***Part 12 – Miscellaneous***

55. Secrecy
56. Prohibition of disclosure of vote
57. Disqualification
58. Delay in postal service through industrial action or unforeseen event

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***Part 1 - Interpretation***

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

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

“election” means an election by a constituency, or by a class within a constituency, to

fill a vacancy among one or more posts on the Council of Governors;

“the Regulator” means the Independent Regulator for NHS foundation Trusts; and

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

## ***Part 2 – Timetable for election***

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

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

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

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

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

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

## ***Part 3 – Returning officer***

**4. Returning officer** – (1) Subject to rule 57, 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 57, 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 1 of the 2003 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

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

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

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

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

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

- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;

(c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

(d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) that the paper is not signed and dated by the candidate, as required by rule 13.

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

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

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

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

(2) The statement must show –

(a) the name, contact address, and constituency or class within a constituency of each candidate standing, and

(b) the declared interests of each candidate standing, as given in their nomination paper.

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

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

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

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

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

**18. Method of election** – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of 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 the 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 by 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. 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.

**37. 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.

**38. Rejected ballot papers** – (1) Any ballot paper – (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which votes are given for more candidates than the voter is entitled to vote,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

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

(a) elsewhere than in the proper place,

(b) otherwise than by means of a clear mark,

(c) by more than one mark,

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

(4) The returning officer is to –

(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and

(b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

(a) does not bear proper features that have been incorporated into the ballot paper,

(b) voting for more candidates than the voter is entitled to,

(c) writing or mark by which voter could be identified, and

(d) unmarked or rejected because of uncertainty,

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

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

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

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

(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each candidate who he or she has declared elected–

(i) where the election is held under a proposed constitution pursuant to powers conferred on the Pennine Care NHS Trust by section 4(4) of the 2003 Act, to the Chairman of the NHS Trust, or

(ii) in any other case, to the Chairman of the corporation; and

(c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

(a) the total number of votes given for each candidate (whether elected or not), and

(b) the number of rejected ballot papers under each of the headings in rule 38(5), available on request.

**41. 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*

**42. 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.

**43. 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.

**44. 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.

**45. 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 46(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.

**46. Application for inspection of certain documents relating to an election** – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

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

by any person without the consent of the Regulator.

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

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

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

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

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

- (a) in giving its consent, the Regulator, and
- (b) and making the documents available for inspection, the corporation,

must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and
- (ii) that the Regulator has declared that the vote was invalid.

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

**47. Countermand or abandonment of poll on death of candidate** – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is

declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

(a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and

(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

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

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

(5) The returning officer is to –

(a) count and record the number of ballot papers that have been received, and

(b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

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

(a) its contents,

(b) the date of the publication of notice of the election,

(c) the name of the corporation to which the election relates, and

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

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

#### *Part 10 – Election expenses and publicity*

##### *Election expenses*

**48. 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.

**49. 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.

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

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

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

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

*Publicity*

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

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

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

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

(d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

**52. 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.

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

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

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

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

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

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

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

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

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

(a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

(b) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

(c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

*Part 12 – Miscellaneous*

**55. 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.

**56. 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.

**57. 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.

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

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers and declarations of identity,

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

## **ANNEX 5 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

### **1. Exclusion of Governors**

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

- 1.1** they are a director of the Trust, or a governor or director of a health service body (unless they are appointed by an appointing organisation which is a health service body);
- 1.2** they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 1.3** they are a member of a Local Authority Scrutiny Committee covering health matters;
- 1.4** they have been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000;
- 1.5** they have within the preceding two years been dismissed, otherwise than by reason of redundancy or incapacity, from any paid employment with a health service body;
- 1.6** 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
- 1.7** they fail to disclose information later obtained by way of a Criminal Records Bureau check; The Trust undertakes not to discriminate unfairly against any subject of a disclosure on the basis of conviction or other information revealed. Having a criminal record will not necessarily prevent an individual from being appointed or elected as a Governor. This will depend on the nature of the position and the circumstances and background of the offences.

### **2. Termination and Removal of Governors**

A person will cease to be a Governor of the Trust if:

- 2.1** they resign by notice in writing to the Trust;
- 2.2** they fail to attend three consecutive meetings, unless the other Members are satisfied that:
  - 2.2.1** the absences were due to reasonable causes; and

- 2.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the Council of Governors consider reasonable.
- 2.3 in the case of an elected Governor ceasing to be a Member of the constituency or class of the constituency by which they were elected;
- 2.4 in the case of an appointed Governor, the appointing organisation terminates the appointment;
- 2.5 they have refused without reasonable cause to undertake any training, which the Council of Governors requires its Members to undertake;
- 2.6 they have failed to sign and deliver to the Trust a statement in the form required by the Trust confirming acceptance of the Code of Conduct for Governors.
- 2.7 they are removed from the Council of Governors under the following provisions;
  - 2.7.1 by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that
    - 2.7.1.1 they have committed a serious breach of the Code of Conduct; or
    - 2.7.1.2 they have acted in a manner detrimental to the interests of the Trust; and
  - 2.7.2 Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.

### **3. *Vacancies on the Council of Governors***

- 3.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provision will apply.
  - 3.1.1 Where the vacancy arises amongst the appointed Governors, the Trust shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
  - 3.1.2 Where the vacancy arises amongst the elected Governors within 12 months following an election to that seat, the Trust shall approach the person who polled the next highest number of votes in the original election and offer the vacant seat to them. Should that person decline, the Trust shall make a similar approach to the next person in line until the seat is filled.
  - 3.1.3 Pursuant to paragraph 3.1.2. above, where the vacant seat fails

to be filled, the Trust shall call an election to fill the seat for the remainder of that term as part of the next round of planned elections, unless no elections are planned within the next 12 months or where this would result in the public Governors failing to make up more than half of the Council of Governors, in which event an election shall be called within three months.

#### **4. Expenses**

- 4.1 The Trust shall reimburse expenses when Governors are required to attend meetings in relation to their Governor duties.
- 4.2 Expenses incurred shall be reimbursed in line with the appropriate Trust policy(ies).

#### **5. Attendance of Staff Governors**

- 5.1 The Trust will grant reasonable time off, with pay, to recognised staff Governors to carry out Governor duties.
- 5.2 Where time off with pay has been approved, the payment due will equate to the earnings the employee would have otherwise received had he/she been at work.

## **ANNEX 6- STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS FOR PENNINE CARE NHS FOUNDATION TRUST**

- 1 Interpretation**
- 2 General Information**
- 3 Composition of the Council of Governors**
  - Appointment and Removal of the Chair and Deputy Chair of the Council of Governors
  - Duties of Deputy Chair
- 4 Meetings of the Council of Governors**
  - Meetings held in Public
  - Calling Meetings
  - Notice of Meetings
  - Setting the Agenda
  - Chair of Meeting
  - Notices of Motions
  - Chair's Ruling
  - Voting
  - Suspension of Standing Orders
  - Variation and Amendment of Standing Orders
  - Record of Attendance
  - Minutes
  - Quorum
- 5 Arrangements for the Exercise of Functions by Delegation**
- 6 Confidentiality**
- 7 Declaration of Interests and Register of Interests**
  - Declaration of Interests
  - Register of Interests
- 8 Compliance - Other Matters**
- 9 Resolution of Disputes with Board of Directors**
- 10 Council Performance**

## 1. Interpretation

- 1.1 Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which s/he shall be advised by the Chief Executive and Director of Finance).
- 1.2 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:
- 1.2.1 "**Accounting Officer**" shall be the officer responsible and accountable for funds entrusted to the Trust. S/he shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
  - 1.2.2 "**Board**" shall mean the Chairman and Non-Executive Directors and the Executive Directors appointed in accordance with the 2006 Act.
  - 1.2.3 "**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.
  - 1.2.4 "**Chairman**" is the person appointed by the Council of Governors in accordance with paragraphs 21.1 and 22.1 of this constitution. The expression "the Chairman of the Trust" 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 or is otherwise unavailable (the Deputy Chairman).
  - 1.2.5 "**Chief Executive**" shall mean the chief officer of the Trust.
  - 1.2.6 "**Committee**" shall mean a Committee appointed by the Council of Governors.
  - 1.2.7 "**Committee Members**" shall be persons formally appointed by the Council of Governors to sit on or to chair specific Committees.
  - 1.2.8 "**Director**" shall mean a person appointed to the Board of Directors in accordance with the Trust's constitution and includes the Chairman.
  - 1.2.9 "**Motion**" means a formal proposition to be discussed and voted on during the course of a meeting.
  - 1.2.10 "**Nominated Officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders.

1.2.11 "Officer" means an employee of the Trust.

1.2.12 "SOs" means Standing Orders.

## 2. General Information

The purpose of the Standing Orders for the Practice and Procedure of the Council of Governors is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings and associated deliberations. The Council of Governors shall at all times seek to comply with the Trust's Code of Conduct.

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

2.2 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Governor save where the Governor has acted recklessly.

On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors 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 paragraph 10 of the Trust's Constitution.

3.2 Appointment and Removal of the Chairman and Deputy Chairman of the Council of Governors - these appointments shall be made by the Governors in accordance with paragraph 14.1 of the Trust's Constitution.

3.3 Duties of Deputy Chairman - Where the Chairman of the Trust has died or has otherwise ceased to hold office or where s/he has been unable to perform his/her duties as Chairman owing to illness, conflict of interest or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman or the Non-Executive Director nominated by the Council of Governors to take on the duties of the Chairman or Deputy Chairman should both be absent from a meeting or otherwise unavailable or unable to perform his/her duties.

## 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 paragraphs 4.1.2 and 4.1.3 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 it considers that:
- 4.1.2.1** publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - 4.1.2.2** 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 the public from the meeting of the Council of Governors if s/he considers that s/he is interfering with or preventing any conduct of the meeting.

**4.1.4** Meetings of the Council of Governors shall be held at least three times each year at times and places that the Council of Governors may determine.

**4.1.5** The Council of Governors may invite the Chief Executive, and other appropriate Directors, to attend any meeting of the Council of Governors to enable Governors to raise questions about the Trust's affairs.

## **4.2** Calling Meetings

Notwithstanding paragraph 4.1.4 above, the Chairman may 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 a majority of the Governors, or if without so refusing the Chairman does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of their members.

## **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 his/her behalf subject to paragraphs 4.3.2 and 4.3.3 below shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least twenty-one clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.

- 4.3.2** Notwithstanding the above requirement for notice, the Chairman may waive notice in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.3** In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.4** Subject to paragraph 4.3.2, failure to serve notice on more than three quarters of Governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

#### **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 of Governors and shall be addressed prior to any other business being conducted.

**4.4.2** In the case of a meeting called by the Chairman, a Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear days before the meeting.

Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

**4.4.3** The Chairman shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least five clear days before the meeting.

#### **4.5** Chairman of Meeting

At any meeting of the Council of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting or the Council of Governors is meeting to appoint or remove the Chairman or decide his/her remuneration and allowances and other terms and conditions of office the Deputy Chairman shall preside. Otherwise, another Non-Executive Director shall preside.

#### **4.6** Notices of Motions

- 4.6.1** A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert this 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 4.3.3 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 the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who gave it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any Governor, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if s/he considers it appropriate.
- 4.6.4** The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5** When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 4.6.5.1** An amendment to the motion.
  - 4.6.5.2** The adjournment of the discussion or the meeting.
  - 4.6.5.3** The appointment of an ad hoc Committee to deal with a specific item of business.
  - 4.6.5.4** That the meeting proceed to the next business.
  - 4.6.5.5** That the motion 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 paragraphs 4.6.5.4 and 4.6.5.5 of these Standing Orders, to ensure objectivity, motions may only be put by a Governor who has not previously taken part in the debate.

#### **4.7** Chairman's Ruling

Statements of Governors made at meetings of the Council of Governors 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** An elected Governor may not vote at a meeting of the Council of Governors unless, before attending a meeting, they have made a declaration in the form specified by the Trust of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a Governor. Making a false declaration may be an offence.
- 4.8.2** Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.8.3** All decisions 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 Governors present so request.
- 4.8.4** If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.8.5** If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.6** In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.8.7** A Governor who is a member of the Public Constituency may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Trust. A

Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors and every agenda for meetings of the Council of Governors shall draw this to the attention of the Governors.

#### **4.9 Suspension of Standing Orders**

- 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 members of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 4.9.2** A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.9.3** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.9.4** No formal business may be transacted whilst Standing Orders are suspended.
- 4.9.5** The Trust's Audit Committee shall review every decision to suspend Standing Orders.

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

These Standing Orders, which may be varied from time to time subject to approval from Monitor, shall be amended only if:

- 4.10.1** a notice of motion has been given; and
- 4.10.2** no fewer than two thirds of the total number of Governors approve the variation/amendment; and
- 4.10.3** the variation/amendment proposed does not contravene a statutory provision.

#### **4.11 Record of Attendance**

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

#### **4.12 Minutes**

- 4.12.1** 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 presiding at it.

**4.12.2** 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.

**4.12.3** Minutes shall be circulated in accordance with the 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 14 of this constitution.

#### **4.13 Quorum**

**4.13.1** A quorum for a Meeting of the Council of Governors shall be 11 Governors, including not less than six public Governors and not less than 5 staff and appointed Governors.

**4.13.2** No business shall be transacted at a meeting of the Council of Governors unless a quorum of the Board of Governors is present.

**4.13.3** If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest s/he 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 an emergency be exercised by the Chairman after having consulted at least five elected Governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council of Governors for ratification.

**5.2** The Nominations Committee of the Council of Governors, which is known as the Council of Governors Appointment & Remuneration Committee, shall exercise the functions set out in its Terms of Reference on behalf of the Council of Governors.

### **6. Confidentiality**

- 6.1** A member of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission.
- 6.2** Members of the Council of Governors Appointment & Remuneration 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.

## **7. Declaration of Interests and Register of Interests**

### **7.1 Declaration of Interests**

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 of Governors. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

- 7.1.1** Interests regarded as "relevant and material" include any of the following, held by a Governor, or the spouse, partner, parent or child of a Governor.
- 7.1.1.1** Directorships, including Non-Executive Directorships, held in private companies or PLCs (with the exception of those of dormant companies).
  - 7.1.1.2** Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - 7.1.1.3** Employment with any private company, business or consultancy.
  - 7.1.1.4** Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.
  - 7.1.1.5** A position of authority in a charity or voluntary organisation in the field of health and social care.
  - 7.1.1.6** Any connection with a voluntary or other organisation contracting for NHS services.
- 7.1.2** If a Governor has any doubt about the relevance of an interest, s/he should discuss it with the Chairman who shall advise him/her whether or not to disclose the interest.

- 7.1.3** At the time Governors' interests are declared, they should be recorded in the minutes of the Council of Governors meeting and entered on a Register of Interests of Governors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.
- 7.1.4** Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.
- 7.1.5** During the course of a Council of Governors meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision. If the Governor remains present at the meeting on the agreement of two thirds of those Governors present, s/he shall not be entitled to vote on the issue in respect of which the conflict of interest has been established.

## **7.2 Register of Interests**

- 7.2.1** The Trust Secretary, will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 7.2.2.** Details of the Register will be kept up to date and reviewed annually.
- 7.2.3** The Register will be available to the public.

## **8. Compliance - Other Matters**

- 8.1** All Members of the Council of Governors shall comply with the Trust's policies relating to standards of business conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 8.2** All 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.
- 8.3** All Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Governors as amended from time to time): -
- Selflessness

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

- Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties

- Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

- Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

- Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

- Honesty

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

- Leadership

Holders of public office should promote and support these principles by leadership and example

## **9. Resolution of Disputes with Board of Directors**

- 9.1** Should a dispute arise between the Council of Governors and the Board of Directors, then the Trust's dispute resolution procedure set out below shall be followed.
- 9.2** The Chairman, or Deputy Chairman (if the dispute involves the Chairman), shall first endeavour, through discussion with 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.
- 9.3** Failing resolution under 9.2 above, then the Board or the Council of Members, 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.
- 9.4** The Chairman 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 of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 9.5** The Chairman or Deputy Chairman (if the dispute involves the Chairman) shall immediately, or as soon as is practical, 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 9.2 above shall be repeated.
- 9.6** If, in the opinion of the Chairman or Deputy Chairman (if the dispute involves the Chairman) and following the further discussions prescribed in 9.5 above, 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 s/he shall advise the Council of Governors and Board of Directors accordingly.
- 9.7** On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8** On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9** Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing the Regulator that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the terms of its authorisation.

## **10. Council of Governors Performance**

The Chairman shall periodically lead a performance assessment process for the Council of Governors to enable the Council of Governors to review its roles, structure and composition, and procedures, taking into account emerging best practice.

## ANNEX 7 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

### STANDING ORDERS FOR THE BOARD OF DIRECTORS FOR PENNINE CARE NHS FOUNDATION TRUST

#### FOREWORD

The Trust's Board of Directors has a responsibility to agree Standing Orders and schedules of reservation and delegation of powers. These documents, together with standing financial instructions, provide a Regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests by ensuring all transactions maximise the benefit to the Trust and protecting staff from possible accusations that they have acted less than properly.

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

#### 1. Introduction

- Statutory framework
- Reservation and delegation of powers
- Interpretation and definitions

#### 2. The Board

- Composition
- Appointment of Chairman and Members of the Board
- Terms of Office
- Appointment and Powers of Deputy Chairman
- Joint Members
- Role of Members
- Executive Directors
- Chief Executive
- Director of Finance
- Non-Executive Directors
- Chairman
- Senior Independent Director
- Corporate Role of the Board
- Charitable Funds

#### 3. Meetings of the Board

- Notice of Meetings
- Agenda
- Petitions
- Chairing of Meetings
- Notices of Motion
- Withdrawal of Motion or Amendments

Motion to Rescind a Resolution  
Motions  
Chairman's Ruling  
Voting  
Minutes  
Suspension of Standing Orders by the Board  
Variation and Amendment of Standing Orders by the Board  
Record of Attendance at Board Meetings  
Quorum  
Review of Chairman

**4. Committees**

Appointment  
Applicability of Standing Orders  
Terms of Reference  
Delegation of Powers to Sub-Committee  
Approval of Appointments  
Committees Established by the Board  
Confidentiality

**5. Arrangements for the Exercise of Functions by Delegation**

Emergency Powers  
Delegation to Committees  
Delegation to Officers  
Overriding Standing Orders

**6. Other Trust Policy Statements/Procedures**

**7. Declarations of Interests and Registers of Interests**

**8. Disability of Chairman and Members of the Board of Directors on account of Pecuniary Interest**

**9. Standards of Business Conduct**

Policy  
Principles of Public Life  
Interests of Officers in Contracts  
Canvassing of and Recommendations by Members of the Board in relation to Appointments  
Relatives of Members of the Board or Officers of the Trust  
Gifts and Hospitality  
Relationships  
Patents and Copyrights  
Second Employments  
Register of Commercial Interests and Affiliations  
Disciplinary Action

**10. Custody of Seal, Sealing and Signature of Documents**

Custody of Seal  
Sealing of Documents

Register of Sealing  
Signature of Documents

**11. Miscellaneous**

Documents having the standing of Standing Orders  
Review of Standing Orders

## **Introduction**

### **Statutory framework**

The principal place of business of the Trust is 225 Old Street, Ashton-under-Lyne, Lancashire OL6 7SR

Foundation Trusts are governed by a Regulatory framework that confers the functions of the Trust and comprises Acts of Parliament (in particular the National Health Service Act 2006), their constitutions and the terms of their authorisations granted by the Regulator.

As a corporate body the Board has specified powers to contract in the name of the Trust and to act as a corporate Trustee. In the latter role the Board is accountable to the Charity Commission for those funds deemed to be charitable, as well as to the Regulator.

The Regulatory framework requires the Trust to adopt Standing Orders (SOs) for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of the SOs setting out the responsibilities of individuals, additional responsibilities and additional detailed provisions.

### **Reservation and delegation of powers**

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in a separate document entitled the Schedule of Reservation and Delegation of Powers and shall have effect as if incorporated into these Standing Orders. This document also details those powers, which it has delegated to officers and other bodies.

#### **1. Interpretation and definitions**

- 1.1** Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders, the schedule of reservation and delegation of powers and/or the standing financial instructions (on which he should be advised by the Chief Executive.)

**1.2** Any expression to which a meaning is given in the National Health Service Act 2006 (the 2006 Act), or in regulations made under the 2006 Act, shall have the same meaning in these Standing Orders and in addition:

**1.2.1** "**Accounting Officer**" means the person who from time to time discharges the functions specified in paragraph 25(5) of schedule 7 to the 2006 Act. For the Trust it shall be the Chief Executive.

**1.2.2** "**Board**" means the Board of Directors, formally constituted in accordance with this constitution and consisting of the Chairman, Non-Executive Directors appointed by the Council of Governors and the Executive Directors.

**1.2.3** "**Chairman**" is the person appointed by the Council of Governors to lead the Board, and to ensure that it discharges its overall responsibility for the Trust as a whole.

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

**1.2.5** "**Committee**" means a Committee appointed by the Board.

**1.2.6** "**Council of Governors**" means the Council of Governors, formally constituted in accordance with the constitution and presided over by the Chairman.

**1.2.7** "**Deputy Chairman**" is 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.

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

**1.2.9** "**Executive Director**" means a member of the Board who is an officer of the Trust.

**1.2.10** "**Non-Executive Director**" means a Non-Executive Director of the Trust who satisfies the independence criteria as set out at paragraph A.3.1 of the NHS Foundation Trust Code of Governance;

**1.2.11** "**Member**" in the context of this document, means the Executive or Non-Executive Members of the Board.

**1.2.12** "**Nominated Officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and standing financial instructions.

- 1.2.13 **"Officer"** means employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 1.2.14 **"Regulator"** means a non-departmental body corporate first established under section 2 of the Health & Social Care (Community Health & Standards) Act 2003 and continuing under section 31 of the 2006 Act. It is responsible for authorising and regulating Foundation Trusts;
- 1.2.15 **"Secretary"** means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy Secretary;
- 1.2.16 **"Senior Independent Director"** means the senior independent Non-Executive Director, appointed by the Chairman after consultation with the Council of Governors.
- 1.2.17 **"SFIs"** means Standing Financial Instructions.
- 1.2.18 **"SOs"** means these Standing Orders.
- 1.2.19 **"Trust"** means the Pennine Care NHS Foundation Trust
- 1.2.20 All references in these instructions to the masculine gender shall be read as equally applicable to the feminine gender.
- 1.2.21 References to any statute, statutory provision, statutory instrument or guidance in these SFIs include reference to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

## 2. The Board

### 2.1 Composition

In accordance with the constitution, the composition of the Board shall comprise both executive and Non-Executive Directors. The Board is to comprise:

- 2.1.1 non-executive Chairman
- 2.1.2 not less than 5 Non-Executive Directors; and
- 2.1.3 not less than 5 Executive Directors; and
- 2.1.4 at least half the Board, excluding the Chairman will comprise Non-Executive Directors.

Of the Executive Directors

- 2.1.5 one of the Executive Directors shall be the Chief Executive
- 2.1.6 the Chief Executive shall be the Accounting Officer
- 2.1.7 one of the Executive Directors shall be the Director of Finance
- 2.1.8 one of the Executive Directors is to be a registered medical practitioner
- 2.1.9 one of the Executive Directors is to be a registered nurse
- 2.1.10 overall the number of Non-Executive Directors (including the Chairman) shall exceed the number of Executive Directors

### **Appointment of Chairman and members of the Board**

- 2.2 The Council of Governors, at a general meeting of the Council of Governors, shall appoint the Chairman and other Non-Executive Directors by majority vote. These arrangements will not apply to the initial Chairman and non-executives who, as part of the transitional arrangements, will transfer from the Pennine Care NHS Trust to the Trust.
- 2.3 The Council of Governors will make the terms and conditions of appointment of the Non-Executive Directors available for inspection.
- 2.4 The Non-Executive Directors shall appoint or remove the Chief Executive, having followed the process specified in the constitution. The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 2.5 A Committee consisting of the Chairman, the Chief Executive (except in the case of appointment of the Chief Executive) and the other Non-Executive Directors shall appoint or remove the Executive Directors, having followed the process specified in the constitution and good employment practice.
- 2.6 These arrangements will not apply to the appointment of the initial Chief Executive and Executive Directors who, as part of the transitional arrangements, will transfer from the Pennine Care NHS Trust to the Trust.

### **Terms of Office**

- 2.7 The Chairman and the Non-Executive Directors will:
  - 2.7.1 serve terms of office of no longer than 3 years;

**2.7.2** be eligible for re-appointment at the end of the three years

**2.7.3** not hold office for longer than six consecutive years, unless in exceptional circumstances, in which case they shall be subject to annual re-appointment.

**2.8** For the purposes of calculating the number of consecutive years of office allowed, service as a Non-Executive Director of the Trust will begin with the authorisation of the NHS Foundation Trust.

**2.9** The Chief Executive and Executive Directors will normally hold contracts of employment that are not time limited.

### **Appointment and Powers of Deputy Chairman**

**2.10** The Council of Governors, at a general meeting of the Council of Governors, shall appoint one of the Non-Executive Directors as Deputy Chairman of the Board. If the Chairman is unable to discharge his office as Chairman of the Trust, the Deputy Chairman of the Board shall be acting Chairman of the Trust.

**2.11** Any Board member so appointed 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 member as Deputy Chairman in accordance with the constitution.

### **Joint Members**

**2.12** Where more than one person is appointed jointly as a member of the Board, those persons shall count as one person.

**2.13** Where the office of a member of the Board is shared jointly by more than one person:

**2.13.1** Either may attend or take part in meetings of the Board.

**2.13.2** If both are present at a meeting they should cast one vote if they agree.

**2.13.3** In the case of disagreements no vote should be cast.

**2.13.4** The presence of either or both those persons should count as the presence of one person for the purpose of quorum.

### **Role of Members**

**2.14** The Board will function as a corporate decision-making body. Executive and Non-Executive Directors will be full and equal members.

Their role as director will be to consider the key strategic and Managerial issues facing the Trust in carrying out its statutory and other functions.

#### **2.14.1 Executive Directors**

Executive directors shall exercise their authority within the terms of these SOs and SFIs and the schedule of reservation and delegation of powers.

#### **2.14.2 Chief Executive**

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under any relevant guidance from the Regulator and in line with the requirements of the Accounting Officer Memorandum.

#### **2.14.3 Director of Finance**

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He shall be responsible along with the Chief Executive for ensuring the discharge of obligations under any relevant guidance from the Regulator and as detailed in the relevant parts of the Schedule of Reservation and Delegation of Powers.

#### **2.14.4 Non-Executive Directors**

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of or when chairing a Committee of the Trust which has delegated powers and in particular in relation to those matters detailed in the relevant parts of the schedule of reservation and delegation of powers.

#### **2.14.5 Chairman**

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

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

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

The Chairman shall comply with those duties delegated to him in sections 6 and 7 of the schedule of reservation and delegation of powers.

#### **2.14.6 Senior Independent Director**

The Chairman shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors to be the Senior Independent Director.

The Senior Independent Director shall make himself available to members and Governors who have concerns that they do not feel they can raise with the Chairman or any executive director of the Trust. Recourse to the Senior Independent Director shall not replace the right to instigate the dispute resolution procedure at Annex 8 of the constitution.

### **Corporate Role of the Board**

**2.15** All business shall be conducted in the name of the Trust.

### **Charitable Funds**

**2.16** The Trust does not currently hold charitable funds. Any gifts offered in the name of the Trust shall be administered in accordance with the Trust's policy.

## **3. Meetings of the Board**

### **Calling a meeting**

**3.1** Ordinary meetings of the Board shall be held at such times and places as the Board may determine.

**3.2** Meetings of the Board may be called by the Trust Secretary, or by the Chairman, or by four directors who give written notice to the Trust

Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after receipt of such a request.

- 3.3** The Secretary shall call a meeting on at least fourteen (14) clear days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or the four directors who give written notice pursuant to SO 3.2 above, whichever is the case, shall call such a meeting.
- 3.4** Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give to all directors at least fourteen (14) clear days written notice of the date and place of every meeting of the Board.
- 3.5** Nothing in these Standing Orders shall require the Board to admit members of the public to meetings without the prior agreement of the Board.
- 3.6** The Board may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

### **Notice of meetings**

- 3.7** Before each meeting of the Board, a notice of the meeting, specifying the business to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf shall be delivered to every Board member, or sent by post to the usual place of residence of such member, so as to be available to him at least five (5) clear days before the meeting.
- 3.8** Want of service of the notice on any member shall not affect the validity of a meeting.
- 3.9** In the case of a meeting called by the Chairman or Board members in default of the Trust Secretary, the notice shall be signed by the Chairman, or those Board members who gave notice pursuant to SO 3.2 above, and no business shall be transacted at the meeting other than that specified in the notice.

### **Agenda**

- 3.10** Agendas will be sent to members at least five (5) clear days before the meeting. Supporting papers shall accompany the agenda, save in an emergency. An agenda shall be presumed to have been served two days after posting.

- 3.11** The Board shall use its annual reporting cycle and actions arising from previous Board meetings to determine the main content of the agenda.
- 3.12** A Board member desiring other matters to be included on an agenda shall make his request known to the Chairman, in writing at least fourteen (14) clear days before the meeting. The Board member should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than fourteen (14) clear days but more than five (5) clear days before a meeting such item of business may, at the discretion of the Chairman, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.

### **Petitions**

- 3.13** Where a petition has been received by the Trust the Chairman shall include it as an item for the agenda of the next Board meeting.

### **Chairing of Meetings**

- 3.14** The Chairman of the Trust or, in his absence, the Deputy Chairman of the Board is to chair meetings of the Board. If both the Chairman and the Deputy Chairman are absent, the Board members present shall choose a Non-Executive Director who is present to chair the meeting.
- 3.15** If the Chairman stands down temporarily, on the grounds of a declared conflict of interest, the Deputy Chairman, if present, shall chair that part of the meeting. If the Chairman and Deputy Chairman are both absent, or disqualified from participating on the grounds of a declared conflict of interest, the Board members present shall choose a Non-Executive Director who is present to chair the meeting.

### **Notices of motion**

- 3.16** A member of the Board desiring to move or amend a motion shall send a written notice thereof at least 14 clear days before the meeting to the Chairman. The Chairman shall insert in the agenda for the meeting all notices so received. This SO 3.16 shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda.

## **Withdrawal of motion or amendments**

- 3.17** 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.

## **Motion to rescind a resolution**

- 3.18** Notice of motion to amend or rescind any resolution, or the general substance of any resolution passed within the preceding 6 calendar months, shall bear the signature of the member who gives it and also the signature of 4 other Board members. When any such motion has been disposed of by the Board, it shall not be competent for any member other than the Chairman to propose a motion to the same effect within 6 months; the Chairman may do so, however, if he considers it appropriate.

## **Motions**

- 3.19** The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.20** When a motion is under discussion, or immediately prior to discussion, it shall be open to a member to move:
- 3.20.1** an amendment to the motion
  - 3.20.2** the adjournment of the discussion or the meeting
  - 3.20.3** the appointment of an ad hoc Committee to deal with a specific item of business
  - 3.20.4** that the meeting proceed to the next business
  - 3.20.5** that the motion be now put
  - 3.20.6** a motion resolving to exclude the public, including the press

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 original motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the original motion. In the case of motions under SO 3.20.4 and SO 3.20.5, to ensure objectivity motions may only be put by a member who has not previously taken part in the debate on the original motion.

## **Chairman's ruling**

- 3.21** Statements of directors made at meetings of the Board must 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 final and observed at the meeting.

## **Voting**

- 3.22** Subject to the following provisions of this SO 3.22, questions arising at a meeting of the Board shall be decided by a majority of votes.
- 3.22.1** In case of an equality of votes the person presiding as Chairman shall have a second and casting vote.
- 3.22.2** No resolution of the Board shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.
- 3.23** All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members present so request.
- 3.24** If at least one-third of the members present so request, the voting (other than by paper ballot), on any question may be recorded to show how each member present voted or abstained.
- 3.25** If a member so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.26** In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.27** An officer who has been appointed formally by the Board to act up for an executive director of the Board during his absence, or to cover a vacant executive director post, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board to represent an executive director 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.

## **Minutes**

- 3.28** Minutes of every meeting of the Board must be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of that meeting.

**3.29** 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 such next meeting.

**3.30** Minutes shall be circulated in accordance with members' wishes.

### **Suspension of Standing Orders by the Board**

**3.31** Except where this would contravene any statutory provision, any direction made by the Regulator, or any term or condition set out in the Trust's constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

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

**3.33** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and members of the Board.

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

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

### **Variation and amendment of Standing Orders by the Board**

**3.36** These Standing Orders shall be amended, subject to approval by the Regulator and only if:

**3.36.1** A notice of motion under SO 3.16 has been given; and

**3.36.2** At least two-thirds of the Board members are present; and

**3.36.3** No fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and

**3.36.4** The variation proposed does not contravene a statutory provision, a direction made by the Regulator, or any term or condition set out in the constitution.

## **Record of attendance at Board meetings**

- 3.37** The names of the Chairman, the Board members present, and individuals in attendance at each Board meeting shall be recorded and this record shall be made available to the Council of Governors upon its request.

## **Quorum**

- 3.38** Five Board members, including not less than two Executive Directors, one of whom must be the Chief Executive or another executive director nominated by the Chief Executive and not less than two Non-Executive Directors, one of whom must be the Chairman of the Trust or the Deputy Chairman of the Board, shall form a quorum.
- 3.39** An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.
- 3.40** If the Chairman or other member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 7 or 8 or 9), he 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 requirement at 3.38 for at least two Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting, or part of a meeting; for example when the Board considers the recommendations of the remuneration Committee.
- 3.41** The Board may agree that its members can participate in its meeting by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

## **Review of Chairman**

- 3.42** As part of a process for the appraisal of the Chairman, which should be agreed with the Council of Governors, the Non-Executive Directors, led by the Senior Independent Director, should meet at least annually without the Chairman to evaluate the Chairman's performance.

## **4. Committees**

### **Appointment**

- 4.1** Subject to such directions as may be given by the Regulator, the Board may and, if directed by the Regulator to do so, shall establish

Committees, reporting to the Board, consisting wholly or partly of the Chairman and members of the Board or wholly of persons who are not members of the Board.

- 4.2 A Committee appointed under SO 4.1 may, subject to such directions as may be given by the Regulator, appoint Sub-Committees consisting wholly or partly of members of the Committee or wholly of persons who are not members of the Committee.
- 4.3 The Board shall have the power to dismiss the members of any Committee or Sub-Committee that is established under the power afforded to the Board under SO 4.1 or under the power afforded to Committees at SO 4.2, from that Committee or Sub-Committee as applicable.

### **Applicability of Standing Orders**

- 4.4 The Standing Orders of the Trust, so far as they are applicable, shall apply with appropriate alteration to meetings of any Committees established by the Board. In which case the term Chairman is to be read as a reference to the Chairman of the Committee as the context permits, and the term member is to be read as a reference to a member of the Committee also as the context permits. There is no requirement for Committees or Sub-Committees, established under SO 4.1 and SO 4.2, to hold meetings in public.

### **Terms of Reference**

- 4.5 Each Committee established by the Board or Sub-Committee shall have terms of reference and powers and be subject to such conditions, such as to reporting back to the Board, as the Board shall decide and shall act in accordance with any legislation and regulation or direction issued by the Regulator. Such terms of reference shall have effect as if incorporated into these Standing Orders.

### **Delegation of powers to Sub-Committee**

- 4.6 Where Committees established by the Board are authorised to establish Sub-Committees they may not delegate executive powers to the Sub-Committee unless expressly authorised by the Board.

### **Approval of appointments**

- 4.7 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 members nor officers, shall be appointed to a Committee the Board shall define the powers of such appointees and may agree allowances, including reimbursement for loss of earnings, and/or expenses.

- 4.8** The Board may elect to change the Committees and Sub-Committees as necessary without the requirement to amend these Standing Orders. Save that the Trust shall at all times have an audit Committee and a remuneration Committee.

### **Committees Established by the Board**

- 4.9** The Committees and Sub-Committees to be established by the Board shall include the following:

**4.9.1** Audit Committee

An Audit Committee shall be established and constituted to provide the Board with an independent and objective review on its internal control systems, to direct and review the work of internal audit, to review the work of external audit and to review compliance with relevant laws and guidance. The Terms of Reference will be approved by the Board and reviewed on a periodic basis.

In accordance with the NHS Foundation Trust Code of Governance, a minimum of three Non-Executive Directors shall be appointed, of which one must have significant, recent and relevant financial experience.

The duties and decisions to be taken by the Committee are contained in the relevant part of section 4 in the schedule of reservation and delegation of powers.

**4.9.2** Remuneration Committee

A Remuneration Committee shall be established and constituted to advise the Board about appropriate remuneration and terms of service for the Chief Executive and other Executive Directors, including:

**4.9.2.1** all aspects of salary (including any performance-related elements/bonuses).

**4.9.2.2** provisions for other benefits, including pensions and cars

**4.9.2.3** arrangements for termination of employment and other contractual terms.

In accordance with the NHS Foundation Trust Code of Governance, the Committee shall be comprised exclusively of Non-Executive Directors, and shall include at least three Non-Executive Directors.

### **4.9.3 Other Committees**

The Board may also establish such other Committees as required to discharge the Trust's responsibilities.

### **Confidentiality**

**4.10** Subject to SO 4.11 a member of a Committee established by the Board or any member of any Sub-Committee shall not disclose a matter dealt with by, or brought before the Committee or its Sub-Committee without its permission until the Committee or Sub-Committee (as applicable) shall have reported to the Board or shall otherwise have concluded on that matter.

**4.11** A director of the Trust or a member of the Committee shall not disclose any matter reported to the Board or otherwise dealt with by the Committee or the Board notwithstanding that the matter has been reported or action has been concluded if the Board or Committee shall resolve that it is confidential.

## **5. Arrangements for the exercise of Functions by Delegation**

**5.1** Subject to the 2006 Act and such directions as may be given by the Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:

**5.1.1** by a Committee or Sub-Committee appointed by virtue of SO 4.1 or 4.2; or

**5.1.2** by an officer of the Trust;

In each case subject to such restrictions and conditions as the Board thinks fit.

### **Emergency Powers**

**5.2** The powers, which the Board has retained to itself within these Standing Orders, may in emergency be exercised by the Chief Executive and the Chairman, after having consulted with at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board for ratification.

### **Delegation to Committees**

**5.3** The Board shall agree from time to time to the delegation of executive powers to be exercised by Committees, or Sub-Committees, formally constituted in accordance with SO 4. The constitution and terms of

reference of these Committees or Sub-Committees and their specific executive powers shall be approved by the Board.

### **Delegation to Officers**

- 5.4** Those functions of the Trust, which have not been retained as reserved by the Board or delegated to a Committee or Sub-Committee, shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Board.
- 5.5** The Chief Executive shall prepare a scheme of delegation identifying his proposals, which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendments to the scheme of delegation that shall also be considered and approved by the Board.
- 5.6** Nothing in the scheme of delegation shall impair the discharge of the direct accountability to the Board of the director responsible for finance to provide information and advise the Board in accordance with statutory or Regulator requirements. Outside these statutory requirements the role of the director responsible for finance shall be accountable to the Chief Executive for operational matters.

### **Overriding Standing Orders**

- 5.7** If for any reason these Standing Orders are not complied with, full details of the non-compliance, any justification for non-compliance and the circumstances surrounding the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## **6. Other Trust Policy Statements/Procedures**

- 6.1** The Board will from time to time agree and approve policy statements/procedures, which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board minutes and will be deemed where appropriate to be an integral part of these Standing Orders and SFIs.

## **7. Declarations of Interests and Registers of Interests**

### **Declaration of Interests**

- 7.1** The constitution requires Board members to declare interests, which are relevant and material to the Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment.
- 7.2** The responsibility for declaring an interest is solely that of the director concerned and shall be declared to the Secretary:
- 7.2.1** Within 28 days of appointment; or
- 7.2.2** If arising later, within 7 days of the director becoming aware of the interest.
- 7.3** Interests which should be regarded as relevant and material are:
- 7.3.1** Any interest in a company, excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total number of shares issued in such company;
- 7.3.2** Any position held by a director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust;
- 7.3.3** Any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Trust;
- 7.3.4** Any interest in an organisation providing health and social care services to the National Health Service;
- 7.3.5** A position of authority in a charity or voluntary organisation in the field of health and social care;
- 7.3.6** Any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 7.4** Any director who has an interest in a matter to be considered by the Board (whether because the matter involves a firm, company, business or organisation in which the director or his spouse or partner has a material interest or otherwise)

- 7.4.1** shall declare such interest to the Board and shall withdraw from the meeting and play no part in the relevant discussion or decision;
  - 7.4.2** shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted); and
  - 7.4.3** details of any such interest shall be recorded in the register of interests of the directors.
- 7.5** Any director who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining directors and in the case of a Non-Executive Director, by a majority of the Council of Governors.
- 7.6** 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 Board meeting following the change occurring.
- 7.7** If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman.

### **Register of Interests**

- 7.8** The Chief Executive will ensure that a register of interests is established to record formally declarations of interests of Board members.
- 7.9** 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.
- 7.10** 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 Members of the Board of Directors on account of Pecuniary Interest
- 8.1** Subject to the following provisions of this standing order, if the Chairman or a member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter, and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall, at the meeting and as soon as practicable after its commencement, disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

- 8.2** The Board may exclude the Chairman or a member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.
- 8.3** Any remuneration, compensation or allowances payable to the Chairman or a member of the Board 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 member of the Board shall be treated, subject to SO 8.6 and SO 8.7, as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:
- 8.4.1** He, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- 8.4.2** He 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.
- 8.5** In the case of persons cohabiting as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this standing order to be also an interest of the other.
- 8.6** The Chairman or Board member shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of:
- 8.6.1** his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
- 8.6.2** an interest in any company, body or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Board member in the consideration or discussion of or in voting on, any question with respect to that contract or matter
- 8.7** Where the Chairman or a Board member 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 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and 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 from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

- 8.8** This SO 8 applies to Committees established by the Board and to Sub-Committees as it applies to the Board and applies to all members of any such Committee or Sub-Committee whether or not he is also a member of the Board, as it applies to a member of the Board.

## **9. Standards of Business Conduct Policy**

### **Policy**

- 9.1** Directors of the Trust shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board for the guidance of all staff employed by the Trust.

- 9.2** Directors of the Trust must behave in accordance with the NHS Foundation Trust Code of Governance.

- 9.3** Each director will uphold the seven principles of public life as detailed by the Nolan Committee:

**9.3.1** Selflessness

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

**9.3.2** Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties

**9.3.3** Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

**9.3.4** Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

### **9.3.5** Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

### **9.3.6** Honesty

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

### **9.3.7** Leadership

Holders of public office should promote and support these principles by leadership and example

## **Interests of Officers in Contracts**

**9.4** If it comes to the knowledge of any officer of the Trust that a contract in which he has any pecuniary interest, not being a contract to which he is or is not himself a party to, has been, or is proposed to be, entered into by the Trust, he shall at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of persons cohabiting as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

**9.5** An officer should also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.

## **Canvassing of and Recommendations by Members of the Board in relation to Appointments**

**9.6** Canvassing of members of the Board or of any Committee established by the Board or Sub-Committee of the Board, either directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this SO 9.6 shall be included in application forms or otherwise brought to the attention of applicants.

**9.7** A member of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment. This SO 9.7 shall not, however, preclude a member of the Board from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 9.8** Informal discussions outside appointments panels or Committees, whether solicited or unsolicited, should be declared to the panel or Committee.

### **Relatives of Members of the Board or Officers of the Trust**

- 9.9** Candidates for any appointment under the Trust shall, when making applications, disclose in writing to the Trust whether they are related to any member of the Board or a holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 9.10** The Chairman and every member of the Board and officer of the Trust shall disclose to the Chief Executive any relationship between himself 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.
- 9.11** Prior to acceptance of an appointment as an executive director, Executive Directors of the Board should disclose to the Board whether they are related to any other member of the Board or holder of any office in the Trust. Any Non-Executive Director shall, on appointment, disclose to the Board whether they are related to any other member of the Board or holder of any office within the Trust.
- 9.12** Where the relationship to a member of the Board is disclosed, SO 8 may apply.

### **Gifts and Hospitality**

- 9.13** Members of the Board and officers of the Trust are expected to maintain high standards of personal conduct in all work related business. Under the Prevention of Corruption Acts they must not accept from any organisation, firm or individual any inducement or reward which might influence them to make a decision not in the best interests of the Trust. Any breach of the Acts renders the employee liable to instant dismissal. Staff should ensure they comply with the relevant Trust policy(ies).
- 9.14** Any gifts received from or offer of gifts by an individual, contractor or potential contractor must be reported immediately to the Chief Executive. In the context of these instructions contractor means any supplier of goods, and/or services to the Trust.
- 9.15** Similarly, all offers of hospitality must be treated on the same basis. Visits to contractors or potential contractors or to another site to inspect their installations must be made at the Trust's expense not the contractor's. Exception to this rule may be granted by the Chief Executive where reasonable. Otherwise only minimal hospitality should

be accepted from a contractor or potential contractor and immediate explanation must be given to the Chief Executive if a breach of the rules occurs.

## **Relationships**

- 9.16** Members of the Board and officers of the Trust should, as far as is reasonable, avoid private transactions with contractors if they have official dealings with them. Obtaining or receiving additional discounts, a lower than usual price or free services by virtue of the officer's business contacts is not permissible except at a trivial level.
- 9.17** There are a number of circumstances where employees may have a personal employment or commercial relationship with a contractor to the Trust, or other interest in such a contractor. It is important that not only should the full circumstances be reported to the Chief Executive, but that the officer also demonstrates that, as far as possible, the relationship has not and will not have any adverse affect on the Trust. Advice should also be sought where the relationship may lead to some form of patent, copyright or other form of development rights, prior to entering into any agreement with the contractor.
- 9.18** The Chief Executive will ensure that a record of incidents concerning gifts and hospitality, and a register of second employments with, or interests in, contractors by employees, are maintained.

## **Patents and Copyrights**

- 9.19** Any officer or independent contractor (whether alone or with any other person) in the course of the duties of his employment or other duties specifically assigned to him originates any design (whether registrable or not) or other work in which copyright may subsist he shall promptly disclose it to Chief Executive and at the request and expense of the Trust do all things necessary or desirable to substantiate the rights of the Trust} in relation to such design or other work.
- 9.20** Subject to the provisions of the Patents Act 1977 if at any time during his employment any officer or independent contractor makes or discovers or participates in the making or discovery of any invention or improvement upon or addition to an invention ('the invention') which is applicable to the business for the time being carried on by the Trust that officer shall promptly disclose it to the Chief Executive and it shall be the absolute property of the Trust.
- 9.21** All arrangements relating to patents and copyrights include the development of computer software.

## **Second Employments**

- 9.22** For full time staff their main employment necessarily takes precedence over any other paid or voluntary activities undertaken. Officers should not engage in any second or spare time job which affects in any way their performance or the discharge of their duties with the Trust.
- 9.23** Second or spare time jobs are permissible, subject to SO 9.24 without the need for registration or authorisation, and may only be pursued where permitted under any officer of the Trust's employment contract and where the activity is not with a supplier or contractor to the Trust or with any other NHS organisation. Where an officer has reason to believe that his second employer has any business dealings whatsoever with the Trust the facts must be reported to the Chief Executive.
- 9.24** Subject to the terms of any employees employment contract second or spare time jobs, whether regular or occasional, may not be with a supplier or contractor to the Trust unless specifically approved by the Chief Executive who will keep a register detailing the personnel, the activity, the employer, and any other such details as are deemed desirable. Details of such situations must be submitted as and when these arise and confirmed on an annual basis.
- 9.25** Particular care must be taken to disclose any employment, even if only on a temporary or supply basis, with another NHS or private health care body.

## **Register of Commercial Interests and Affiliations**

- 9.26** The Trust shall keep a register of commercial interests and affiliations, the register being held by the Chief Executive. It is essential that any member of staff who feels there may be conflict of interest makes an appropriate submission to the Chief Executive.

## **Disciplinary Action**

- 9.27** Failure to follow the principles and guidance in these Standing Orders may result in disciplinary action.

## **10. Custody of Seal, Sealing and Signature of Documents**

### **Custody of Seal**

- 10.1** The common seal of the Trust shall be the responsibility of the Secretary and kept in a secure place.

## **Sealing of Documents**

- 10.2** 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 established by the Board where the Board has delegated its powers to authorise the application of the Trust's seal.
- 10.3** Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance, or an officer nominated by him and authorised and countersigned by the Chief Executive, or an officer nominated by him who shall not be within the originating directorate.
- 10.4** All deeds entered into by the Trust and all documents conveying an interest in land must be executed by the application of the Trust's seal.

## **Register of Sealing**

- 10.5** 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 have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board at least annually. The report shall contain details of the seal number, the description of the document and date of sealing.

## **Signature of Documents**

- 10.6** 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 or nominated executive director unless any enactment or otherwise requires or authorises, or the Board shall have delegated the necessary authority to some other person for the purpose of such proceedings.
- 10.7** The Chief Executive or nominated officer shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any Committee established by the Board with delegated authority or any Sub-Committee with delegated authority.

## **11 Miscellaneous**

Standing Orders to be given to members of the Board and officers of the Trust.

- 11.1** It is the duty of the Chief Executive to ensure that existing Board members and officers of the Trust and all new appointees are notified of and understand their responsibilities within the Standing Orders, schedule of reservation and delegation of powers and standing financial

instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate.

### **Documents having the Standing of Standing Orders**

- 11.2** SFIs and the Schedule of Reservation and Delegation of Powers shall have effect as if incorporated into these Standing Orders.

### **Review of Standing Orders**

- 11.3** SOs shall be reviewed periodically by the Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

## **ANNEX 8 - FURTHER PROVISIONS**

### **1. Termination of Membership**

- 1.1** A Member of the Trust shall cease to be a Member if:
- 1.1.1** they resign by notice to the Trust;
  - 1.1.2** they die;
  - 1.1.3** they are expelled from membership under this Constitution;
  - 1.1.4** they are dismissed from employment by the Trust;
  - 1.1.5** they cease to be entitled under this Constitution to be a Member of any of the Public Constituencies or of any of the classes of the Staff Constituency;
  - 1.1.6** if it appears to the Trust that they no longer wish to be a Member of the Trust, and after enquiries made, they fail to demonstrate that they wish to continue to be a Member of the Trust;
- 1.2** A Member may be expelled by a resolution approved by not less than two-thirds of the Council of Governors present and voting at a general meeting. The following procedure is to be adopted.
- 1.2.1** Any member may complain to the Trust that another member has acted in a way detrimental to the interests of the Trust.
  - 1.2.2** The Trust shall cause such enquiries to take place as are necessary and present a report to the Council of Governors.
  - 1.2.3** The Council of Governors may dismiss the complaint and take no further action; or
  - 1.2.4** for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
  - 1.2.5** arrange for a resolution to expel the member complained of to be considered at the next general meeting of the Council of Governors.
- 1.3** If a resolution to expel a member is to be considered at a general meeting of the Council of Governors details of the complaint must be sent to the member complained of not less than one calendar month

before the meeting, with an invitation to answer the complaint and attend the meeting.

- 1.4** At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 1.5** If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 1.6** 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.
- 1.7** No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

## **2. Indemnity**

- 2.1** The Trust shall provide an indemnity to any member of the Council of Governors and the Board of Directors that if any such person acts honestly and in good faith such person will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors.

## **3. Dispute Resolution Procedures**

- 3.1** Every unresolved dispute which arises out of this constitution between the Trust and:
  - 3.1.1** a Member; or
  - 3.1.2** any aggrieved person who has ceased to be a member within six (6) months prior to the date of the dispute; or
  - 3.1.3** any person bringing a claim under this constitution; or
  - 3.1.4** an office-holder of the Trust;

is to be submitted to a single arbitrator agreed by the parties or in the absence of agreement to be nominated by the President for the time being of the Law Society of England and Wales. The arbitrator shall arbitrate any such dispute in accordance with the Arbitration Act 1996. The arbitrator's decision will be final and binding on all parties.

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

#### **4. Amendment of the Constitution**

**4.1** No amendment shall be made to this constitution unless:

**4.1.1** it has been approved by a majority of members present and voting at a members meeting duly called by order of the Council of Governors in accordance with this constitution; and

**4.1.2** it has been approved by the Independent Regulator.

**4.2** No amendment shall be made to the provisions of this constitution concerning the public constituencies unless it has also been approved by a majority of the Governors as may have voted at a Council of Governors meeting.

**4.3** No amendment shall be made to the provisions of this constitution concerning the staff constituency or the classes of the staff constituency unless it has also been approved by a majority of the members of all of the classes of the staff constituency as may have voted at a members meeting.

#### **5. Head Office**

The Foundation Trust Head Office is at 225 Old Street Ashton-under-Lyne, Lancashire, OL6 7SR

#### **6. Notices**

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

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

## **ANNEX 9 – DISQUALIFICATION**

- 1.** A person may not become or continue as a Director of the Trust if:
  - 1.1** they are a member of the Council of Governors;
  - 1.2** they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 1.3** they are a member of the Local Authority's Scrutiny Committee covering health matters;
  - 1.4** they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 1.5** In the case of a Non-Executive Director, they are no longer a member of one of the public constituencies;
  - 1.6** they are a person whose tenure of office as a Chairman or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 1.7** they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - 1.8** in the case of a Non-Executive Director they have refused without reasonable cause to fulfil any training requirements established by the Board of Directors;
  - 1.9** they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors;
  - 1.10** they fail to meet the criteria for independence as defined in the Foundation Trust Code of Governance;
  - 1.11** they fail to disclose information later obtained by way of a Criminal Records Bureau check; The Trust undertakes not to discriminate unfairly against any subject of a Disclosure on the basis of conviction or other information revealed. Having a criminal record will not necessarily prevent an individual from being appointed as a Director of the Trust. This will depend on the nature of the position and the circumstances and background of the offences.
  - 1.12** they have been removed from an NHS performers list, as defined in Statutory Instrument 2004, No. 585, The National Health Service (Performers List) Regulations 2004; or

- 1.13** they are included on the Sex Offenders Register.
- 2.** A person may not become or continue as a Member of the Trust if:
  - 2.1** they are under the age of 16 years, at the time of application
  - 2.2** they have been categorized as a 'vexatious complainant', as defined by Trust policy.
  - 2.3** they have been the subject of official action for acts of violence and aggression
  - 2.4** they are a registered sex offender

In relation to any such person, membership of the Trust may be refused or withdrawn if the Council of Governors considers that it is not in the best interests of the Trust for them to become or remain a Member.