



The Newcastle upon Tyne Hospitals  
NHS Foundation Trust

**NHS FOUNDATION TRUST**

**CONSTITUTION**

**MAY 2006**

**AMENDED NOVEMBER 2008**

**AMENDED DECEMBER 2009**

**AMENDED OCTOBER 2012**

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**THE NEWCASTLE UPON TYNE HOSPITALS  
NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the 2003 Act. References in this constitution to legislation include all amendments, replacements, or re-enactments made.

References to legislation include all regulations, statutory guidance or directions.

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

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

## **1. Interpretation and Definitions**

**Unless otherwise stated, all references are to paragraph numbers in Schedule 7 of the 2006 Act, as amended by the 2012 Act.**

1.1 In this constitution:-

"the 2003 Act"	means the Health and Social Care (Community Health and Standards) Act 2003;
"the 1977 Act"	means the National Health Service Act 1977;
"the 2006 Act"	means the National Health Service Act 2006;
"the 2012 Act"	means the Health and Social Care Act 2012;
"applicant NHS Trust"	means the NHS Trust which made the application to become an NHS Foundation Trust;
"area of the Trust"	means the area consisting of all the areas specified in Annex 1 as an area for a public constituency;
"authorisation"	authorisation granted by the Independent Regulator pursuant to the 2003 Act;
"Board of Directors"	means the board of directors as constituted in accordance with this constitution;
"Council of Governors"	means the Council of Governors as constituted in accordance with this constitution;
"Director"	means a director on the board of directors;

“financial year”	means- (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and  (b) each successive period of twelve months beginning with 1st April.
“he”	means he or she
“Local Authority Governor”	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of an area specified in Annex 1 as an area for a public constituency;
"Member"	means a Member of the Trust;
“Monitor”	means the corporate body known as Monitor, as provided by Section 61 of the 2012 Act;
“other partnership Governor”	means a member of the Council of Governors appointed by a partnership organisation other than a university providing a medical or dental school to the Trust specified in paragraph 7.3
“Public Governor”	means a member of the Council of Governors elected by the members of the public constituency;
"Secretary"	means the Secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a Joint, Assistant or Deputy Secretary;
“Staff Governor”	means a member of the Council of Governors elected by the members of the staff constituency;
“the Trust”	means The Newcastle upon Tyne Hospitals NHS Foundation Trust;
“University Governor”	means a member of the Council of Governors appointed by a university providing a medical or dental school to a hospital of the Trust.

## **2. Name**

- 2.1 The name of this Trust is to be “The Newcastle upon Tyne Hospitals NHS Foundation Trust”.

## **3. Principal Purpose**

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to
- 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
- 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## **4. Powers**

- 4.1 The Trust is to have all the powers of an NHS Foundation Trust set out in the 2003 Act, subject to the terms of its authorisation.
- 4.2 The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 4.3 In particular the Trust may:
- 4.3.1 acquire and dispose of property;
- 4.3.2 enter into contracts;
- 4.3.3 accept gifts of property (including property to be held on trust for the purposes of the Trust or for any purpose relating to the health service); and
- 4.3.4 employ staff.
- 4.4 Any power of the Trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

- 4.5 The Trust may also for the purposes of or in connection with its functions and subject to the term of its authorisation:
- 4.5.1 borrow money;
  - 4.5.2 invest money (other than money held by the Trust as a trustee), which may include investment by:
    - (a) forming, or participating in forming bodies corporate; or
    - (b) otherwise acquiring membership of bodies corporate.
  - 4.5.3 give financial assistance (whether by way of loan, guarantee or otherwise) to any person.

## **5. Membership and Constituencies**

5.1 The Trust is to have 4 membership constituencies, namely-

- (a) 3 “public constituencies”: and
- (b) a “staff constituency”.

## **6. Application for Membership**

6.1 Members of the Trust who are members of a public constituency listed in column 1 of Annex 1 are to be individuals-

- (a) who live in the area specified for that constituency in the corresponding entry in column 2 of that Annex; and
- (b) who are not eligible to become a member of the staff constituency and are not Members of any other constituency or otherwise disqualified for membership under paragraph 9.1; and
- (c) who have each made an application for membership to the Trust, as set out at Annex 7.

6.2 Members of the Trust who are members of the staff constituency are to be individuals: –

- (a) who are employed under a contract of employment by the Trust; or
- (b) who are not so employed but who nevertheless exercise functions for the purposes of the Trust; or
- (c) who are honorary members of staff; or
- (d) who being members of the voluntary staff class exercise functions for the purposes of the Trust; and

- (e) who satisfy the minimum duration requirements set out in paragraph 3(5) of Schedule 1 to the 2003 Act, that is to say –
- (f) who are not disqualified for membership under paragraph 9.1 below; and
  - (i) in the case of individuals described at (a) and (c) above,
    - (aa) who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
    - (bb) who have been continuously employed by the Trust for at least 12 months.
  - (ii) in the case of individuals described at (b) and (d) above, who have exercised the functions for the purposes of the Trust for at least 12 months; and
- (g) who have each made an application for membership to the Trust.

## **7. Public Constituencies**

- 7.1 The public constituencies are to be known by the names listed in column 1 of Annex 1.
- 7.2 The minimum number of Members required for each public constituency mentioned in column 1 of Annex 1 is to be the number given in the corresponding entry in column 3 of that Annex.

## **8. Staff Constituency**

- 8.1 The staff constituency is to be divided into 6 classes of individuals follows:
  - (a) the medical and dental staff class;
  - (b) the nursing and midwifery and related staff class;
  - (c) the Health Professionals Council and related staff class;
  - (d) the administrative & clerical, management and hospital chaplains staff class;
  - (e) the ancillary and estates staff class; and
  - (f) the volunteers staff class.
- 8.2 The members of the medical and dental staff class are individuals who are members of the staff constituency who are fully registered persons within the meaning of the Medicines Act 1956 and, in the case of medical



practitioners, following the coming into force of the Medical Act 1983 (Amendment) Order 2002 (S.I. 2202/3135) who hold a licence to practise.

- 8.3 The members of the nursing and midwifery and related staff class are individuals who are members of the staff constituency who are not fully registered persons within the meaning of the Medicines Act 1956, but whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professionals established by section 25 of the NHS Reform and Health Care Professionals Act 2002 and who are registered with the Nursing and Midwifery Council. Also included within this group are non-professionally qualified staff groups.
- 8.4 The members of the Health Professionals Council and related staff class are individuals who are members of the staff constituency who are not fully registered persons within the meaning of the Medicines Act 1956, but whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professions established by section 25 of the NHS Reform and Health Care Professionals Act 2002 and who are not registered with the Nursing and Midwifery Council. Also included within this group are non-professionally registered staff groups.
- 8.5 The members of the administrative & clerical, management and hospital chaplains staff class are individuals who are members of the staff constituency who do not come within paragraphs 8.2, 8.3, or 8.4 above and are designated by the Trust as administrative & clerical, management staff or hospital chaplains.
- 8.6 The members of ancillary and estates staff class are individuals who are members of the staff constituency and are designated by Trust as ancillary and estates staff.
- 8.7 The members of the volunteers staff class are members of any of the League of Friends, the Chaplaincy Volunteers, the WRVS (on site), the Community Advisory Panel or the Friends of the Fleming.
- 8.8 The minimum number of members required for the staff constituency is to be 1,750.
- 8.9 A person who is eligible to be a Member of the staff constituency (see paragraph 6.2 above) may not become or continue as a Member of any constituency other than the staff constituency.

## **9. Restriction on Membership**

- 9.1 A person may not be a Member of the Trust if he –
- (a) is under the age of 18 years.
  - (b) if, within the last 5 years, they have been involved in a serious incident of violence against a member of the Trust's staff or registered volunteers or at any of the Trust's hospitals or facilities.

- (c) has habitually and persistently and without reasonable grounds instituted complaints against the Trust and are classified as a vexatious complainant under the terms of Trust policy.
- (d) if they have, within the preceding two years, been dismissed, otherwise than by reason of redundancy, from any paid employment with any NHS body.
- (e) if there are reasonable grounds, in the opinion of the Council of Governors, to believe that they are likely to act in a way detrimental to the interests of the Trust.

9.2 It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

### 9.3 **Termination of Membership**

9.3.1 A Member shall cease to be a Member if he-

- (a) resigns by notice to the Secretary;
- (b) ceases to fulfil the requirements of paragraph 6.1, or 6.2
- (c) is disqualified from membership by reason of paragraph 9.1.

## 10. **Annual Members' Meeting**

10.1 The Trust shall hold an annual meeting of its Members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

## 11. **Council of Governors - composition**

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

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

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

## **12. Council of Governors – election of Governors**

- 12.1 Members of a public constituency may elect any of their number to be a public Governor and the number of Governors to be elected by each constituency shall be as set out in Annex 1.
- 12.2 Members of a staff class of the staff constituency may elect any of their number to be a staff Governor for that class and each staff class is to elect one Governor, except for the Nursing & Midwifery class which shall elect two Governors.
- 12.3 If contested, the election must be by secret ballot.
- 12.4 A person may not vote at an election for a Governor unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a member of the constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

## **13. Council of Governors - Tenure**

### **13.1 Public Governors-**

- (a) (subject to retirement by rotation provisions set out in the Election Rules) may hold office for a period of three years;
- (b) are eligible for re-election at the end of that period;
- (c) may not hold office for longer than 9 years; and
- (d) cease to hold office if they cease to be a member of a public constituency.

### **13.2 Staff Governors-**

- (a) may hold office for a period of three years;
- (b) are eligible for re-election at the end of that period;
- (c) may not hold office for longer than 9 years; and
- (d) cease to hold office if they cease to be a member of the staff constituency.

### **13.3 The Local Authority Governor -**

- (a) may hold office for a period of 3 years;
- (b) is eligible for reappointment at the end of that period;
- (c) may not hold office for longer than 9 years; and

- (d) ceases to hold office if the sponsoring local authority withdraws its sponsorship of them.

#### 13.4 The University Governors-

- (a) may hold office for a period of 3 years;
- (b) are eligible for reappointment at the end of that period;
- (c) may not hold office for longer than 9 years; and
- (d) cease to hold office if the sponsoring university withdraws its sponsorship of them.

#### 13.5 Other partnership Governors -

- (a) may hold office for a period of 3 years;
- (b) are eligible for reappointment at the end of that period;
- (c) may not hold office for longer than 9 years; and
- (d) cease to hold office if the sponsoring partnership organisation withdraws its sponsorship of them.

#### 13.6 Termination of Tenure

13.6.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to Secretary to the Trust.

13.6.2 If a Governor fails to attend at least half of the meetings of the Council of Governors in any financial year, or is absent from 3 consecutive meetings, his tenure of office is to be immediately terminated unless the other Governors are satisfied that —

- (a) the absence was due to a reasonable cause; and
- (b) he will be able to start attending meetings of the Trust again within such a period as they consider reasonable.

13.6.3 The Council of Governors reasonably considers, after due consideration in accordance with procedures set out in its Standing Orders and on the basis of the agreement of 75% of its members at a general meeting, that he is unfit to discharge the functions of a Governor.

### 14 Council of Governors - Disqualification and Removal

14.1 A person may not become or continue as a Governor of the Trust if-

- (a) in the case of a Staff Governor or a Public Governor, he ceases to be a member of the constituency he represents;
- (b) in the case of a Local Authority Governor, University Governor, Local Authority or other Partnership Governor, local authority, the university or organisation withdraw their sponsorship of him;
- (c) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (d) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (e) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (f) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (g) he is a person whose tenure of office as the Chairman or as a member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non attendance at meetings, or for non disclosure of a pecuniary interest;
- (h) he is an Executive or Non Executive Director of the Trust, or a Governor, Non Executive Director, Chairman, Chief Executive officer or employee of another NHS organisation;
- (i) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had his name included in such a list;
- (j) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs.
- (k) he has been disqualified by any of the following regulatory bodies: the General Medical Council, the Nursing and Midwifery Council, the Health Professions Council, the General Dental Council, the General Optical Council, the Royal Pharmaceutical Society of Great Britain, the General Chiropractic Council or the General Osteopathic Council.
- (l) his name has been placed on registers of Schedule 1 offenders pursuant to the Sex Offenders Act 1977 and/or the Children and Young Persons Act 1933.

14.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified for appointment under paragraph 14.1, he shall notify the Secretary to the Trust in writing of such disqualification.

14.3 If it comes to the notice of the Secretary to the Trust at the time of his appointment or later that the Governor is so disqualified, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor.

#### 14.4 **Vacancies**

14.4.1 Where membership of the Council of Governors ceases for one of the reasons set out in paragraphs 14.1 or 14.2 above:

- (a) Public and Staff Governors shall be replaced by by-elections, in accordance with the relevant Electoral Scheme set out in Annex 3 save that, if there is still a majority of Public Governors on the Council and/or there are no fewer than seventeen Public or no fewer than four Staff Governors the relevant post or posts may remain vacant until the next cycle of elections; and
- (b) University Governors and other partnership Governors are to be replaced in accordance with the processes agreed pursuant to paragraphs 13.4 to 13.5.

14.4.2 The validity of any act of the Trust is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

### 15. **Council of Governors – duties of governors**

15.1 The general duties of the Council of Governors are –

15.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

15.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

15.3 At a General Meeting –

- (i) to appoint or remove (such removal to be effective on the approval of 75% of the Council of Governors) the Chairman and the other Non Executive Directors. The initial Chairman appointed by the Council of Governors is to be the Chairman of the applicant NHS trust if he wishes to be appointed. The other initial Non-Executive Directors appointed by the Council of Governors are, so far as possible, to be Non-Executive Directors (other than the Chairman)

of the applicant Trust who wish to be appointed. The removal of a Non-Executive Director requires the approval of three-quarters of the members of the Council;

- (ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the Non- Executive Directors;
- (iii) to appoint or remove the Trust's auditor at a general meeting of the Council of Governors; and
- (iv) to be presented with the annual accounts, any report of the auditor on them and the annual report.

- 15.4 To approve (by a majority of the Council of Governors voting) an appointment (by the Non Executive Directors) of the Chief Executive other than the initial Chief Executive of the Trust appointed in pursuance of paragraph 19(6) of Schedule 1 to the 2003 Act.
- 15.5 To give the views of the Council of Governors to Directors for the purposes of the preparation (by the directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to the independent Regulator.
- 15.6 To consider the annual accounts, any report of the auditor on them and the annual report.
- 15.7 To respond as appropriate when consulted by the Directors.
- 15.8 To establish mechanisms for meeting and consulting with members of the Trust.
- 15.9 Governors are not to receive remuneration.

## **16. Council of Governors – meetings of governors**

- 16.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 24 or 25 below) or, in his absence, the Senior Independent Director, shall preside at meetings of the Council of Governors.
- 16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, as set out in para 13(2) of the 2012 Act.
- 16.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.
- 16.4 The Council of Governors is to meet at least 4 times per year.

- 16.5 At a general meeting, within 6 months of the end of the financial year the Council of Governors is to receive and consider the annual accounts, any report of the auditor on them, and the annual report.
- 16.6 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 2.
- 16.7 A Governor elected to the Council of Governors by a public constituency or the staff constituency may not vote at a meeting of the Council of Governors unless, within a month of his election, he has made a declaration in the form specified at paragraph 16.8 stating which constituency he is a member of and is not prevented from being a Governor by paragraph 8 of Schedule 1 to the 2003 Act or under this constitution
- 16.8 The form referred to in paragraph 16.8 is as set out in Annex 6.

## **17. Council of Governors – Standing Orders**

- 17.1 The Council of Governors, in consultation with the Board of Directors, shall adopt Standing Orders.
- 17.2 The Standing Orders shall specify the arrangements for excluding Governors from discussion or consideration of any contract, proposed contract or other matter, as appropriate.

## **17.3 Committees and Subcommittees**

- 17.3.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint sub-committees.
- 17.3.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.

## **18. Council of Governors – referral to the Panel**

- 18.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing –
- 18.1.1 to act in accordance with its Constitution, or
- 18.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 18.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

## **19. Council of Governors – conflicts of interest of the Governors**



19.1 If a Governor has a pecuniary or non-pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council of Governors, he shall disclose that to the rest of the Council of Governors as soon as he is aware of it. If a Governor is in any doubt whether an interest should be disclosed he should discuss the position with the Chair.

## **20. Council of Governors – Travel Expenses**

20.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides. These are to be published in the annual report.

20.2 The remuneration and allowances for Non-Executive Directors set by the Governors are also to be published in the annual report.

## **21. Board of Directors – composition**

21.1 The Trust is to have a Board of Directors. It is to consist of Executive and Non- Executive Directors.

21.2 The Board is to include–

(a) The following Non Executive Directors-

- (i) a Chairman (who will also act as chair of the Council of Governors),
- (ii) a minimum of 7 to a maximum of 9 other Non Executive Directors (including 1 representative of the University of Newcastle upon Tyne and 1 representative of Newcastle City Council,).

(b) the following Executive Directors -

- (i) the Chief Executive (and accounting officer),
- (ii) the Finance Director,
- (iii) the Medical Director (who shall for the avoidance of doubt be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984)),
- (iv) the Nursing and Patient Services Director (who shall for the avoidance of doubt be a registered nurse or a registered midwife),
- (v) the Business and Development Director
- (vi) the Operations Director.

## **22. Board of Directors – general duty**

22.1 The general duty of the Board of Directors and of each director individually is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

### **22.2 Roles and Responsibilities**

22.2.1 The powers of the Trust are to be exercisable by the Board of Directors on its behalf.

22.2.2 Any of those powers may be delegated to a committee of Directors or to an Executive Director.

## **23. Board of Directors – qualification for appointment as a Non-Executive Director**

23.1 Subject to paragraph 23.2 below, only a member of the public constituency or an individual exercising functions for the University of Newcastle upon Tyne or Newcastle City Council is eligible for appointment as a Non-Executive Director.

23.2 Paragraph 23.1 above does not apply to the appointment of any initial Non-Executive Director in pursuance of paragraph 19 of Schedule 1 to the 2003 Act.

## **24. Board of Directors – appointment and removal of Chairman and other Non-Executive Directors**

24.1 Subject to the provisions in paragraph 25.1 regarding initial appointments, Non-Executive Directors are to be appointed in accordance with a process of open competition outlined as follows:

(a) There shall be a committee of the Trust (“the Nominations Committee”) which shall, taking into account the composition of the board and the likely needs of the Trust at the relevant time, prepare selection criteria for the Non-Executive Directors; and

(b) The Trust shall publicly advertise the posts to be filled; and

(c) The Nominations Committee shall put forward to the Council of Governors a shortlist of suitable candidates for appointment based on the selection criteria referred to in 23.1 and 24.1(a).

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

## **25. Board of Directors – appointment of initial Chairman and initial other Non-Executive Directors**

25.1 The Chairman and the Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting. The initial Chairman and the other Non-Executive Directors are to be appointed for the unexpired period of their respective terms of office as Chairman or (as the case may be) Non-Executive Director of the applicant NHS trust or 12 months whichever is the longer. Details of the Chairman and Non-Executive Directors of the NHS trust to be appointed as the initial Chairman and Non-Executive Directors of the Trust are attached at Annex 8.

## **26. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors**

26.1 The Chief Executive (and accounting officer) and the Finance Director shall hold offices for a period in accordance with the terms and conditions of office decided by the relevant committee of Non-Executive Directors.

26.2 The Executive Directors, other than the Chief Executive and the Finance Director, shall hold office for a period in accordance with the terms and conditions decided by the relevant committee of Non-Executive Directors (or, pending the establishment of such a committee, in accordance with the terms and conditions decided by the applicant NHS Trust's Board of Directors).

26.3 The Non-Executive Directors shall appoint or remove the Chief Executive.

26.4 The appointment of the Chief Executive shall require the approval of the Council of Governors.

26.5 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other executive directors.

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

27.1 The initial Chief Executive is to be appointed for the unexpired period of his term of office of the applicant NHS trust or 12 months, whichever is the longer.

## **28. Board of Directors - disqualification**

28.1 A person may not be a Director of the Trust if: –

- (a) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (c) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether

- suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (d) in the case of a Non Executive Director, he no longer satisfies paragraph 23.1;
  - (e) he is 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 his appointment is not in the interests of public service, for non attendance at meetings, or for non disclosure of a pecuniary interest;
  - (f) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had his name included on such a list;
  - (g) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - (h) he is disqualified under the Company Directors Disqualification Act 1986; or
  - (i) he has not, upon appointment, delivered a statement agreeing to be bound by the Trust's Code of Conduct for Directors.

## **29. Board of Directors – meetings**

- 29.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 29.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## **30. Board of Directors – Standing Orders**

- 30.1 The Board of Directors shall adopt Standing Orders.
- 30.2 The Standing Orders shall specify the arrangements for excluding Directors from discussion or consideration of any contract, proposed contract or other matter, as appropriate.

## **31. Board of Directors – conflicts of interest of Directors**

- 31.1 The duties that a director of the Trust has by virtue of being a director include in particular –
  - 31.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

- 31.1.2 a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 31.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if
- 31.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 31.2.2 the matter has been authorised in accordance with the Constitution.
- 31.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 31.4 In sub-paragraph 31.1.2, “third party” means a person other than
- 31.4.1 the Trust, or
  - 31.4.2 a person acting on its behalf.
- 31.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extend of that interest to the other Directors.
- 31.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 31.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 31.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 31.9 A Director does not need to declare an interest
- 31.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 31.9.2 if, or to the extent that, the Directors are already aware of it;
  - 31.9.3 if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered
    - 31.9.3.1 by a meeting of the Board of Directors; or
    - 31.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

## **32. Board of Directors – remuneration and terms of office**

- 32.1 The Chairman and other Non-Executive Directors shall have an initial term of office of three years (subject to satisfactory annual appraisal by the Nominations Committee) and may be reappointed by the Nominations Committee for a second term of three years, subject to satisfactory annual appraisal.
- 32.2 The remuneration of the Chairman and other Non-Executive Directors shall be set by the Nominations Committee, taking advice as required on benchmarks from similar organisations.
- 32.3 The terms of office and remuneration of the Chief Executive and other Executive Directors shall be determined by a committee of the Non-Executive Directors, chaired by the Chairman and established for that purpose.

### **33. Registers**

- 33.1 The Trust is to have –
- (a) a register of Members showing, in respect of each Member, the constituency to which he belongs; and
  - (b) a register of members of the Council of Governors.
- 33.2 The form of entries in the Registers, and the procedures for admitting and removing individuals from the Registers shall be as set out in the Trust's Standing Orders from time to time.
- 33.3 The Trust is to send to the Independent Regulator a list of the persons who were first elected or appointed: -
- (a) the members of the Council of Governors; and
  - (b) the Directors.

### **34. Registers – inspection and copies**

- 34.1 The Trust shall make the Registers described in paragraph 33.1 above available for inspection by members of the public free of charge at all reasonable times and shall supply copies upon request free of charge.

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

- 35.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times: –
- 35.1.1 a copy of the current constitution;
  - 35.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 35.1.3 a copy of the latest annual report.

- 35.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 35.2.1 a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration), or 65 LA (Trusts to be dissolved) of the 2006 Act.
  - 35.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 35.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
  - 35.2.4 a copy of any draft report laid under section 65F (administrator's draft report) of the 2006 Act.
  - 35.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 35.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report), or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 35.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 35.2.8 a copy of any final report published under section 65I (administrator's final report).
  - 35.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
  - 35.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 35.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 35.4 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.

## **36. Auditor**

- 36.1 The Trust is to have an auditor and is to provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Part 1 of the 2003 Act.
- 36.2 A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 1 to the 2003 Act.
- 36.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 15.3(iii), and monitoring of the auditor's functions by a committee of Non Executive Directors is covered in paragraph 37.1.
- 36.4 An officer of the Audit Commission may be appointed with the agreement of the Commission.
- 36.5 The Auditor is to carry out his duties in accordance with Schedule 5 to the 2003 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

## **37. Audit Committee**

- 37.1 A committee of Non-Executive Directors established as an audit committee is to monitor, review and carry out such other functions as are appropriate in relation to the internal and external audit of the Trust.

## **38. Accounts**

- 38.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 38.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 38.3 The accounts are to be audited by the Trust's auditor.
- 38.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 38.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

## **39. Annual Reports and Forward Plans**

- 39.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 39.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.



- 39.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 39.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 39.5 Each forward plan must include information about
- 39.5.1 the activities other than the provision of goods and services for the purpose of the health service in England that the Trust proposes to carry on; and
- 39.5.2 the income it expects to receive from doing so.
- 39.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 39.5.1 the Council of Governors must
- 39.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its functions, and
- 39.6.2 notify the Directors of the Trust and its determination.
- 39.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purpose of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

#### **40. Presentation of the Annual Accounts and Reports to the Governors and Members**

- 40.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 40.1.1 the annual accounts;
- 40.1.2 any report of the auditor on them; and
- 40.1.3 the annual report.
- 40.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 40.3 The Trust may combine a meeting of the Council of Governors convened for the purpose of sub-paragraph 16.1 with the Annual Members' Meeting.

## **41 Instruments**

- 41.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 41.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

## **42. Amendments of the Constitution**

- 42.1 The Trust may make amendments to this Constitution with the approval of Monitor.
- 42.2 No proposals for amendment of this Constitution will be put to Monitor unless it has been approved by three quarters of the Council of Governors.

## **43. Mergers etc and significant transactions**

- 43.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 43.2 The constitution does not contain any descriptions of the term "significant transaction" for the purposes of section 51A of the 2006 Act (Significant Transactions).