

- 4.3.2.1 a report on the steps taken to secure that taken as a whole the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
- 4.3.2.2 the progress of the membership strategy; and
- 4.3.2.3 any changes to the membership strategy.

5. **Application for membership**

- 5.1 An individual who is eligible to become a member may do so on application to the Trust, or by being invited by the Trust to become a member of the staff constituency in accordance with paragraph 7.
- 5.2 An individual shall become a member on the date his or her name is added to the Trust's register of members, and shall cease to be a member on the date his or her name is removed from the register of members.

6. **Public Constituency**

- 6.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member.
- 6.2 Those members who live in an area specified for a public constituency are referred to collectively as a "public constituency".
- 6.3 The minimum number of members for each public constituency is specified in Annex 1.
- 6.4 An individual who ceases to live in any area specified in Annex 1 shall cease to be a member of any public constituency. A member who moves from one area to another shall become a member of the public constituency for that new area. Members should notify the Trust of any change of address.
- 6.5 In the case of any doubt the Trust's decision as to whether or not an individual lives in an area shall be final.

7. **Staff Constituency**

- 7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member provided:
 - 7.1.1 he or she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 7.1.2 he or she has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency if they have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, the definition of individuals who exercise functions for the purposes of the Trust includes individuals who are Volunteers.
- 7.3 Chapter 1 of Part XIV of the Employment Rights Act 1996 applies in determining whether an individual has been continuously employed by the Trust for the purposes of paragraph 7.1.2 above or has continuously exercised functions for the purposes of the Trust for the purpose of paragraph 7.2 above.
- 7.4 Those individuals who are eligible for membership by reason of this paragraph 7 are referred to collectively as the "staff constituency".
- 7.5 The staff constituency shall be divided into two descriptions of individuals who are eligible for

membership of the staff constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the staff constituency.

7.6 The minimum number of members in each class of the staff constituency is specified in Annex 2.

7.7 An individual who is:

7.7.1 eligible to become a member of the staff constituency; and

7.7.2 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 they inform the Trust that they does not wish to do so.

8. **Restriction on membership**

8.1 A member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

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

8.3 An individual shall not be eligible for membership if he or she:

8.3.1 is under 12 years of age;

8.3.2 fails or ceases to fulfil the criteria for membership of any of the constituencies;

8.3.3 has demonstrated aggressive or violent behaviour at any Hospital or other trust premises or during any other interaction with Trust staff or Sub-contractors or Volunteers, and following such behaviour he or she has been asked to leave, or has been removed or excluded from any Hospital or other Trust premises or programmes of home or community visits, under the Trust's policy for withholding treatment from violent/aggressive patients: zero tolerance;

8.3.4 has been confirmed by the Trust to be a 'vexatious complainant' as defined in the Trust's policy on handling of complaints;

8.3.5 has been removed from being a member of another NHS Foundation Trust;

8.3.6 has been deemed by the Trust to have acted in a manner contrary to the interests of the Trust; or

8.3.7 has previously been removed from being a member of the Trust under paragraph 8.5.3.

8.4 Members should ensure their own eligibility for membership and inform the Trust if they cease to be eligible.

8.5 A Member shall cease to be a Member if—

8.5.1 They resign by notice in writing to the Trust,

8.5.2 They die, or

8.5.3 They cease to be eligible for membership under paragraph 8.3 and they are removed from Membership following the process set out in 8.6 below.

8.6 The Trust shall give any Member at least 14 days' written notice before removing him or her from Membership under paragraphs 8.5.3. The Trust shall consider any representations

- case) has not been discharged;
- 12.1.2 has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it;
 - 12.1.3 has within the preceding five years 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 or her.
 - 12.1.4 has within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 12.1.5 he or she is a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his or her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 12.1.6 he or she is a Director of the Trust, or a director, chair, or chief executive officer of another NHS Foundation Trust;
 - 12.1.7 he or she is a Governor of another NHS Foundation Trust which is considered by the Secretary, at his or her absolute discretion, to be in competition with the Trust;
 - 12.1.8 he or she has had his or her name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he or she has not subsequently had his or her name included in such a list; or
 - 12.1.9 he or she lacks capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor.
- 12.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
 - 12.3 A Governor who becomes disqualified must notify the Secretary as soon as practicable and in any event within 14 days of first becoming aware that he or she is disqualified. Upon receipt of such notice the Secretary shall confirm receipt and shall remove the Governor's name from the Register of Governors such that the Governor ceases to act as a Governor.
 - 12.4 If the Trust becomes aware that a Governor is disqualified, the Secretary shall give him or her notice that he or she is disqualified as soon as practicable. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he or she shall cease to act as a Governor.
 - 12.5 A Governor's term of office shall be terminated:
 - 12.5.1 by the Governor giving the Secretary notice in writing of his or her resignation from office at any time during the term of that office;
 - 12.5.2 by the giving of a notice under paragraph 12.3 or 12.4;
 - 12.5.3 by the Council of Governors if a Governor fails to attend two consecutive meetings of the Council of Governors, unless the Council of Governors is satisfied that:
 - 12.5.3.1 the absence was due to a reasonable cause; and
 - 12.5.3.2 the Governor will resume attendance at meetings of the Council of Governors again within such a period as it considers reasonable.
 - 12.5.4 if the Council of Governors resolves that:

- 12.5.4.1 his or her continuing as a Governor would or would be likely to prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this constitution or otherwise to discharge its duties and functions,
 - 12.5.4.2 his or her continuing as a Governor would or would be likely to prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services,
 - 12.5.4.3 his or her continuing as a Governor would or would be likely to adversely affect public confidence in the goods and services provided by the Trust,
 - 12.5.4.4 his or her continuing as a Governor would or would be likely to otherwise bring the Trust into disrepute or be detrimental to the interest of the Trust,
 - 12.5.4.5 his or her continuing as a Governor would or would be likely to prejudice the ability of the Council of Governors to discharge its duties and responsibilities efficiently and effectively,
 - 12.5.4.6 it would not be in the best interests of the Trust for him or her to continue in office as a Governor,
 - 12.5.4.7 he or she is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his or her continuance in office would not be in the best interests of the Trust,
 - 12.5.4.8 he or she has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him or her to undertake in his or her capacity as a Governor,
 - 12.5.4.9 he or she has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, and/ or this constitution, or
 - 12.5.4.10 he or she has committed a material breach of this Constitution and/or any code of conduct applicable to Governors and/or the Standing Orders for Governors.
- 12.6 Where there are concerns about a Governor's conduct (including but not limited to where any of the circumstances in 12.5.4 above apply) the Chair or, if the Chair has a conflict of interest, the Deputy Chair, shall be authorised to take such action as may be immediately required, including but not limited to:
- 12.6.1 suspension of the Governor concerned so that the matter can be investigated. Any suspension of a Governor shall be confirmed to him or her in writing in such form as the Chair may decide in the circumstances.
 - 12.6.2 commissioning a fair and independent investigation into the matter, to be conducted by one or more individuals with relevant experience, either from within or outside of the Trust.
- 12.7 Where an investigation identifies that a Governor has failed to comply with this Constitution, and/or any code of conduct applying to Governors, and/or the Standing Orders

14. **Council of Governors – general duties**

14.1 The general duties of the Council of Governors are to:

14.1.1 hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and

14.1.2 represent the interests of the Members of the Trust as a whole and the interests of the public.

14.2 The Trust will take steps to secure that Governors are equipped with the skills and knowledge they require in their capacity as such.

15. **Council of Governors – meetings of Governors**

15.1 The Chair or, in his or her absence the Deputy Chair, shall preside at meetings of the Council of Governors, and the person chairing the meeting shall have a casting vote.

15.2 Meetings of the Council of Governors shall be open to members of the public, unless the Council of Governors has resolved to exclude members of the public for special reasons.

15.3 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 or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.

16. **Council of Governors – Standing Orders**

16.1 The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

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

17.1 If a Governor has a financial, non-financial professional or non-financial personal 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 or she becomes aware of it.

17.2 The Standing Orders for Governors shall make provision for the disclosure of interests and arrangements following any such disclosure, including, where appropriate, the exclusion of a Governor declaring an interest from the discussion or consideration of the matter in respect of which an interest has been disclosed.

18. **Council of Governors – remuneration and travel expenses**

18.1 Governors are not to receive remuneration from the Trust, provided that this shall not prevent the remuneration of Governors by their employer.

18.2 The Trust may pay travelling and other expenses to members of the Council of Governors at such rates as the Trust decides from time to time.

19. **Board of Directors – composition**

19.1 The Trust has a Board of Directors, which comprises both executive and non-executive Directors.

19.2 The Board of Directors comprises:

19.2.1 a non-executive Chair;

19.2.2 a maximum of eight other non-executive Directors (one of whom may be nominated to be the Senior Independent Director); and

matters;

26.1.12 is the subject of a disqualification order made under the Company Directors' Disqualifications Act 1986;

26.1.13 is a partner or spouse of an existing Director;

26.1.14 is an 'unfit person' as defined in the Trust's provider licence (as may be amended from time to time), or

26.1.15 does not meet any other statutory requirement for being a director of an NHS foundation trust.

27. Board of Directors – meetings

27.1 Meetings of the Board of Directors shall be open to the public, unless the Board of Directors has resolved that members of the public should be excluded for special reasons.

27.2 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.

28. Board of Directors – Standing Orders

28.1 The Standing Orders for the Practice and Procedure of the Board of Directors (the “Standing Orders for Directors”), as may be varied from time to time, are attached at Annex 7.

29. Board of Directors – conflicts of interest of Directors

29.1 The duties that a Director has by virtue of being a Director include in particular—

29.1.1 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; and

29.1.2 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.

29.2 The duty referred to in sub-paragraph 29.1.1 is not infringed if—

29.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

29.2.2 the matter has been authorised in accordance with the constitution.

29.3 The duty referred to in sub-paragraph 29.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

29.4 In sub-paragraph 29.1.2, “third party” means a person other than—

29.4.1 the Trust, or

29.4.2 a person acting on its behalf.

29.5 If a Director 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 extent of that interest to the other Directors.

29.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

29.7 Any declaration required by this paragraph must be made before the Trust enters into the

34. Documents available for public inspection

- 34.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 34.1.1 a copy of the current Constitution;
 - 34.1.2 a copy of the latest annual accounts and of any report of the Auditor on them; and
 - 34.1.3 a copy of the latest annual report.
- 34.2 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:
- 34.2.1 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 65LA (trusts to be dissolved) of the 2006 Act;
 - 34.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 34.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 34.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 34.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 34.2.6 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;
 - 34.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 34.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
 - 34.2.9 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; and
 - 34.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 34.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 34.4 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.

35. Auditor

- 35.1 The Trust shall have an Auditor.
- 35.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

steps as are necessary as a result.

43. **Instruments**

43.1 The Trust shall have a seal.

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

44. **Indemnity**

44.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

44.2 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

45. **Dispute Resolution**

45.1 In the event of any dispute between the Council of Governors and the Board of Directors:

45.1.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

45.1.2 if the Chair is unable to resolve the dispute he or she shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; and

45.1.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

46. **Interpretation and definitions**

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

46.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made.

46.3 References to legislation include all regulations, orders, statutory guidance or directives.

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

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

46.6 In this Constitution:-

46.6.1 **2006 Act** means the National Health Service Act 2006;

46.6.2 **2012 Act** means the Health and Social Care Act 2012;

46.6.3 **Accounting Officer** means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act and in the Accounting Officer Memorandum published by Monitor;

46.6.4 **Appointment Committee** means a committee appointed by the Council of Governors pursuant to paragraphs 1.2.5 and 1.2.6 of Appendix 3 of Annex 9;

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

“*transfer value*” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

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

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

- (a) count and record the number of:
 - (iii) ballot papers that have been returned; and
 - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records 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 or the voter ID number on an internet voting record, telephone voting record or text voting record.

43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words "one", "two", "three" and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.2 The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words "one", "two", "three" and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.4 The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

STV47. Transfer of votes

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing

70. Delay in postal service through industrial action or unforeseen event

70.1 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,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

2.8.3.5 that the motion be now put;

2.8.3.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.

2.8.4 In the case of sub-paragraphs 2.8.3.3 and 2.8.3.5.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.

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

2.8.6 Subject to paragraph 2.9.1, the mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no other Governor shall speak more than once or for more than three minutes.

2.9 Chair's Ruling

2.9.1 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 Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

2.10 Voting

2.10.1 A Governor may not vote at a meeting of the Council of Governors unless he or she has made a declaration in the form specified within Schedule A of these Standing Orders, that he or she is a member of the constituency which elected him or her and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution. Such declaration must be dated at least 7 Clear Days prior to the commencement of the meeting.

2.10.2 Except as stated otherwise in the constitution or these Standing Orders, every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question.

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

2.10.4 Whoever is Chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a casting vote.

2.10.5 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.

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

2.10.7 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy.

2.10.8 Any matter which could be decided by the Council of Governors in a meeting may be determined by written resolution. A written resolution shall, with any accompanying papers which are relevant, describe the matter to be decided and provide for Governors to sign the resolution to confirm their agreement. A written resolution may comprise identical documents sent to all Governors, each to be

signed by a Governor, or one document to be signed by all Governors. A written resolution shall be passed only when at least a majority of the Governors, including a majority of Governors who are members of the public constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice. The Secretary shall keep records of all written resolutions.

2.11 Minutes

- 2.11.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chair presiding at it.
- 2.11.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

2.12 Suspension of Standing Orders

- 2.12.1 Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the public constituency of the Trust, and that a majority of those present vote in favour of suspension.
- 2.12.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 2.12.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Governors.
- 2.12.4 No formal business may be transacted while Standing Orders are suspended.

2.13 Variation and Amendment of Standing Orders

- 2.13.1 These Standing Orders shall be amended only if:
 - 2.13.1.1 a notice of proposal under Standing Order 4.5.2 has been given; and
 - 2.13.1.2 at least half the total number of Governors vote in favour of amendment; and
 - 2.13.1.3 the variation proposed does not contravene a provision of the Regulatory Framework.

2.14 Record of Attendance

- 2.14.1 The names of the Chair and Governors present at the meeting shall be recorded in the minutes.

2.15 Quorum

- 2.15.1 No business shall be transacted at a meeting unless at least one third of all the Governors are present, including at least one third of the public Governors.
- 2.15.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for at least 5 Clear Days and upon reconvening, those present shall constitute a quorum.
- 2.15.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 7 he or she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the

passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

2.16 Meetings: Electronic Communication

- 2.16.1 In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 2.16.2 A Governor in electronic communication with the Chair and all other parties to a meeting of the Council of Governors or of a committee or sub-committee of the Governors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he or she has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 2.16.3 A meeting at which one or more of the Governors attends by way of electronic communication is deemed to be held at such a place as the Governors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Governors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
- 2.16.4 Meetings held in accordance with this SO are subject to requirements in respect of quorum. For such a meeting to be valid, a quorum **MUST** be present and maintained throughout the meeting.
- 2.16.5 The Minutes of a meeting held in this way **MUST** state that it was held by electronic communication and that the Governors were all able to hear each other and were present throughout the meeting.

3. Lead Governor and Deputy Lead Governor

- 3.1 The Governors shall appoint a Lead Governor and a Deputy Lead Governor at the first meeting of the Council of Governors and at each annual meeting of the Council of Governors thereafter.
- 3.2 Without prejudice to the right of any Governor to communicate directly with Monitor, the Lead Governor will be the point of contact between Monitor and the Council of Governors.
- 3.3 Without prejudice to the rights of any Governor to communicate directly with the Chair, the Lead Governor shall be responsible for receiving from Governors and communicating to the Chair any comments, observations and concerns expressed to him or her by Governors (other than at meetings of the Council of Governors) regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business
- 3.4 The Deputy Lead Governor shall be responsible for supporting the Lead Governor in his or her role and for performing the responsibilities of the Lead Governor whenever he or she is known to be unavailable.
- 3.5 Each Governor shall communicate any comment, observation or concern which he or she may have to the Lead Governor in the first instance and only to the Deputy Lead Governor if the Lead Governor is known to be unavailable.
- 3.6 The Lead Governor and Deputy Lead Governor shall be elected by, and from amongst, the Governors who have been elected as Governors from the public constituency of members.
- 3.7 The Lead Governor and the Deputy Lead Governor so appointed shall hold office until the next annual meeting of the Council of Governors but shall be eligible for re-appointment at that time.

- 3.8 Nominations forms for appointment as Lead Governor and Deputy Lead Governor shall be sent out not less than 15 Clear Days prior to the annual meeting of the Council of Governors. Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the principal place of business of the Trust addressed to the Secretary to arrive not less than 3 Clear Days before the meeting.
- 3.9 There shall be separate forms of nomination for appointment to the position of Lead Governor and the position of Deputy Lead Governor and eligible Governors may be nominated for both positions.
- 3.10 In the event of there being two or more nominations for either appointment a secret ballot shall be held of all the Governors present at the meeting with each Governor present having one vote for each contested appointment.
- 3.11 The meeting shall adjourn while the ballot is taken and the Governor whose nomination receives the largest number of votes for each position shall be appointed.
- 3.12 In the event of an equality of votes the Chair of the meeting shall have a casting vote.
- 3.13 If a Governor shall receive the largest number of votes for appointment as both Lead Governor and Deputy Lead Governor that Governor shall be appointed as Lead Governor and the Governor who received the second largest number of votes for the position of Deputy Lead Governor shall be appointed as Deputy Lead Governor
- 3.14 The result of the ballot shall be announced at the meeting.

4. **Committees**

- 4.1 The Council of Governors may appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Regulatory Framework, consisting wholly or partly of the Chair and Governors. The Council of Governors may appoint to such committees persons who are neither Governors, nor Directors or Officers of the Trust.
- 4.2 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by Monitor, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 4.3 The Council of Governors shall approve the members of the Appointments and Remuneration Committee.
- 4.4 A committee appointed under Standing Order 4 may, subject to approval given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee. Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 4.5 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors (and to sub-committees established with the approval of the Council of Governors) with the terms "Chair" to be read as a reference to the Chair of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.
- 4.6 Any Committee or Sub-Committee established under this Standing Order 4 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the Dispute Resolution Procedure as set out at Paragraph 45 of the Constitution.
- 4.7 Where the Council of Governors is required to appoint persons to a committee to undertake

statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by Monitor.

- 4.8 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.
- 4.9 If the Board of Directors agrees, the Council of Governors may appoint Governors to serve on joint committees with the Board of Directors or committees of the Board of Directors. Where Governors are appointed to committees of the Board of Directors they shall have observer status only.

5. **Declarations of Interests and Register of Interests**

5.1 Declaration of Interests

5.1.1 The Regulatory Framework requires each Governor to declare to the Secretary:

5.1.1.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved or likely to be involved in making as described in Standing Orders 5.2.2, 5.2.3 and 5.2.6; and

5.1.1.2 any actual or potential, direct or indirect, non-financial professional interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 5.2.4 and 5.2.6; and

5.1.1.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Order 5.2.5 and 5.2.6.

5.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 Clear Days of becoming aware of the existence of that interest, and in a form prescribed by the secretary which shall be included as Schedule B.

5.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and the Chair shall then decide what action to take. This may include excluding the Governor from discussions on the matter and/or prohibiting the Governor from voting on any question with respect to the matter. Subject to Standing Order 5.2.3, if a Governor has declared a financial interest (as described in Standing Order 5.2.2) he or she shall not take part in the consideration or discussion of the matter.

5.1.4 Any interest declared at a meeting of the Council of Governors and subsequent action taken should be recorded in the minutes of the Council of Governor's meeting at which the interest was declared. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

5.1.5 This Standing Order 7 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he or she is also a Governor).

5.1.6 Governors' interests will be disclosed in the Trust's Annual Report, at least to

comply with the Financial Reporting Manual as published by Monitor, but the Annual Report may also refer to the published declaration of interests of Governors.

5.2 Nature of Interests

5.2.1 Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by Monitor.

5.2.2 A financial interest is where a Governor may receive direct financial benefits (by either making a gain or avoiding a loss) from the consequences of a decision of the Council of Governors. This could include:

5.2.2.1 directorships, including non-executive directorships held in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or

5.2.2.2 employment in an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or

5.2.2.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding.

5.2.3 A Governor shall not be treated as having a financial interest in a matter by reason only:

5.2.3.1 of shares or securities held in collective investment or pensions funds or units of authorised unit trusts; or

5.2.3.2 of an interest in any company, body or person with which he or she is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that matter; or

5.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

5.2.4 A non-financial professional interest is where a Governor may obtain a non-financial professional benefit from the consequence of a decision that the Council of Governors makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a Governor is:

5.2.4.1 an advocate for a particular group of patients; or

5.2.4.2 a clinician with a special interest; or

5.2.4.3 an active member of a particular specialist body; or

5.2.4.4 an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.

5.2.5 A non-financial personal interest is where a Governor may benefit personally from a decision that the Council of Governors makes in ways which are not directly

linked to their professional career and do not give rise to a direct financial benefit. This could include where the Governor is:

5.2.5.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or

5.2.5.2 a member of a lobbying or pressure group with an interest in health and/or social care.

5.2.6 A Governor will be treated as having an indirect financial interest, non-financial professional interest or non-financial personal interest where he or she has a close association with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest who would stand to benefit from a decision in which the Governor is involved in making. This includes material interests of:

5.2.6.1 close family members and relatives, including a spouse, partner, parent, child or sibling;

5.2.6.2 close friends and associates; and

5.2.6.3 business partners.

5.2.7 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

5.3 Register of Governors

5.3.1 The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors, the dates defining their terms of office, and an address through which they may be contacted which may be the Secretary.

5.4 Register of Governors' Interests

5.4.1 The Secretary shall keep a Register of Interests of Governors which shall contain the names of each Governor, whether he or she has declared any interest, and if so, the interest declared.

6. Standards of Business Conduct

6.1 Members of the Council of Governors shall comply with the Trust's Code of Conduct and any guidance issued by Monitor.

7. Appointments and Recommendations

7.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

7.2 Informal discussions outside the Appointment Committee or Nominations Committee, whether solicited or unsolicited, should be declared to the panel or committee.

7.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him or her liable to instant dismissal.

7.4 The Chair and every Governor shall disclose to the Chief Executive or his or her delegated

officer any relationship between himself or herself and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or his delegated officer to report to the Council of Governors any such disclosure made.

- 7.5 On appointment, Members of the Council of Governors should disclose to the Council of Governors whether they are related to any other Member of the Council of Governors or holder of any office in the Trust.
- 7.6 Where the relationship to a Member of the Council of Governors of the Trust is disclosed, Standing Order 5 shall apply.

8. **Miscellaneous**

- 8.1 The Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands his or her responsibilities within these Standing Orders.
- 8.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed no less frequently than every two years and any resulting changes approved by the Board of Directors and the Council of Governors.
- 8.3 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

SCHEDULE A

Declaration to the Secretary of Berkshire Healthcare NHS Foundation Trust

A person may not stand for election to the Council of Governors as a public governor unless he or she has made a declaration in the form specified below of his or her qualification to vote as a member of the public constituency and is not prevented from being a member of the Council of Governors by paragraph 12 (disqualification and removal).

THE DECLARATION

I hereby declare that I am entitled to stand for election to the Council of Governors as a governor elected by the public constituency because I am a member of the public constituency and I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 to the National Health Service Act 2006, which states;

A person may not become or continue as a member of the Council of Governors if he or she:

- has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it;
- has within the preceding five years 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 or her.
- has within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- he or she is a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his or her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- he or she is a Director of the Trust, or a director, chair, or chief executive officer of another NHS Foundation Trust;
- he or she is a Governor of another NHS Foundation Trust which is considered by the Secretary, at his or her absolute discretion, to be in competition with the Trust;
- he or she has had his or her name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he or she has not subsequently had his or her name included in such a list; or
- he or she lacks capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor.

I further hereby declare that I am entitled to stand for election to the Council of Governors as a governor elected by the public constituency under the Constitution of the Trust.

Signed.....Name.....

Dated

SCHEDULE B

Prescribed Form of Declaration of Interests

Declaration to the Secretary of Berkshire Healthcare NHS Trust Foundation Trust

I hereby declare that I am at the date of this declaration a member of the [Public/Staff] constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of the Constitution.

I declare that I have read and fully understood the Standing Orders for Governors.

I fully understand the requirements to declare interests as outlined within the Standing Orders for Governors.

(Please delete either one or two below)

- 1 I confirm that I have no current interest to declare
- 2 I have the following interests to declare.

I agree to abide by the conditions outlined in the Standing Orders for Governors and to maintain updated information within the register of Governors interests as defined within the Standing Orders for Governors

Name Date.....

Signature.....

ANNEX 7

Standing Orders for the Practice and Procedure of the Board of Directors

(Paragraph 28)

1. Interpretation and Definitions

- 1.1 Save as otherwise permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he or she should be advised by the Chief Executive and Secretary).
- 1.2 Terms used in these Standing Orders have the meaning given to them in the Constitution.
- 1.3 Words importing the masculine gender include the feminine gender and vice versa.

2. The Trust Board

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be in the name of the Trust as corporate trustee.
- 2.3 In relation to Funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.4 The Trust has the functions conferred on it by the Regulatory Framework. Accountability for charitable Funds held on trust is to be made to the Charity Commission. Accountability for non-charitable Funds held on trust is only to Monitor.
- 2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Delegation and have effect as if incorporated into the SOs.
- 2.6 **Removal of the Chair and other non-Executive Directors**
 - 2.6.1 Removal of the Chair or another non-Executive Director shall require approval of three-quarters of the members of the Council of Governors.
- 2.7 **Appointment and Powers of Deputy-Chair**
 - 2.7.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors may appoint a non-Executive Director to be Deputy-Chair for such period, not exceeding the remainder of his term as non-Executive Director of the Trust, as the Council of Governors may specify on appointing him or her.
 - 2.7.2 Any non-Executive Director so appointed may at any time resign from the office of Deputy-Chair by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy - Chair in accordance with the provisions of SO 2.12.3.
 - 2.7.3 Where the Chair of the Trust has died or has ceased to hold office, or where he or she has been unable to perform his or her duties as Chair owing to illness, conflict of interest or any other cause, the Deputy-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his or her duties, as the case may be; and references to the Chair in these SOs shall, so long as there is no Chair able to perform his or her duties, be taken to include references to the Deputy - Chair. Where both the Chair and Deputy-Chair are unable to perform their duties owing to illness, conflict of interest or any other cause, another non-Executive Director as may be appointed by the Council of Governors shall act as Chair.

3. Meetings of the Trust

3.1 Admission of the Public and the Press

3.1.1 Meetings of the Board of Directors shall be open to the public, unless and to the extent that the Board of Directors has resolved that members of the public should be excluded from a meeting on the grounds that

3.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

3.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Board of Directors considers are special reasons for excluding the public from the meeting in accordance with the Constitution.

3.1.2 The public and representatives of the press shall be afforded reasonable facilities to attend all public events or meetings of the Board of Directors, including the Annual General Meeting.

3.1.3 The Chair shall give such directions as he or she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted.

3.1.4 Nothing in these SOs shall require the Board of Directors to allow members of the public or representative of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.

3.2 Calling Meetings

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

3.2.2 The Chair may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of the Directors, and this has been presented to him or her, or if, without so refusing, the Chair does not call a meeting within 7 days after such requisition has been presented to him or her, at the Trust's Headquarters, such one third or more members of the Board of Directors may forthwith call a meeting.

3.3 Notice of Meetings

3.3.1 Before each meeting of the Board of Directors a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an Officer of the Trust authorised by the Chair to sign on his behalf, shall be delivered to every Director, or sent by post to the usual place of residence of every Director, so as to be available to him or her at least three Clear Days before the meeting.

3.3.2 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

3.3.3 Want of service of the notice on any one member of the Board of Directors shall not affect the validity of a meeting.

3.3.4 In the event of an emergency giving rise to the need for an immediate meeting,

SOs 3.3.1 to 3.3.4 shall not prevent the calling of such a meeting without the requisite 3 Clear Days' notice provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the Agenda for the meeting is restricted to matters arising in that emergency.

3.4 Agendas

3.4.1 Agendas and supporting papers will be sent to members of the Board of Directors at least 3 Clear Days before the meeting, save in emergency. Failure to serve such a notice on more than three members of the Board of Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.

3.4.2 Before each public meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the Agenda, shall be displayed at the Trust's Headquarters and on the Trust's website at least 3 Clear Days before the meeting.

3.4.3 Before holding a meeting, the Board of Directors will send a copy of the agenda (but not supporting papers) to the Council of Governors. The agenda sent to the Governors will include the business to be transacted in any private meeting of the Board of Directors.

3.5 Setting the Agenda

3.5.1 The Board of Directors may determine that certain matters shall appear on every Agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted. (Such matters may be identified within these SOs).

3.5.2 A Director desiring a matter to be included on an Agenda shall make his request in writing to the Chair at least 14 Clear Days before the meeting, subject to SO3.3. The Chair shall include on the Agenda any matter contained in a request received at least 14 Clear Days before the meeting. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chair. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information.

3.6 Petitions

3.6.1 Where a petition has been received by the Trust the Chair shall include the petition as an item for the Agenda of the next Board of Directors meeting.

3.7 Chair of Meeting

3.7.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy-Chair, if there is one and he or she is present, shall preside. If the Chair and Deputy-Chair are absent such non-Executive Director (who is not also an Officer of the Trust) as the Directors present shall choose shall preside.

3.7.2 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy-Chair, if present, shall preside. If the Chair and Deputy-Chair are absent, or are disqualified from participating, such non-Executive Director (who is not also an Officer of the Trust) as the Directors present shall choose shall preside.

3.8 Chair's Ruling

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

3.9 Notices of Motion

3.9.1 Subject to the provisions of SO 3.11 'Motions: Procedure at and during a meeting' and SO 3.12 'Motion to Rescind a Resolution', a Member of the Board wishing to move or amend a motion shall send a written notice to the Chair.

3.9.2 The notice shall be delivered at least 14 Clear Days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these Standing Orders and the appropriate Regulations. Subject to SO 3.3.3, this Standing Order shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

3.10 Emergency Motions

3.10.1 Subject to the agreement of the Chair, and subject also to the provision of SO 3.11 'Motions: Procedure at and during a meeting', a Director of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.11 Motions: Procedure at and during a meeting

3.11.1 Who may propose

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

3.11.2 Contents of motions

3.11.2.1 The Chair may exclude from the debate at his discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

3.11.2.1.1 the reception of a report;

3.11.2.1.2 consideration of any item of business before the Board;

3.11.2.1.3 the accuracy of minutes;

3.11.2.1.4 that the Board proceed to next business;

3.11.2.1.5 that the Board adjourn;

3.11.2.1.6 that the question be now put.

3.11.3 Amendments to motions

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

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

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

3.11.4 Rights of reply to motions

3.11.4.1 Amendments

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

3.11.4.2 Substantive/original motion

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

3.11.5 Withdrawing a motion

3.11.5.1 A motion, or an amendment to a motion, once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

3.11.6 Motions once under debate

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

3.11.6.1.1 an amendment to the motion;

3.11.6.1.2 the adjournment of the discussion, or the meeting;

3.11.6.1.3 that the meeting proceed to the next business;

3.11.6.1.4 that the question should be now put;

3.11.6.1.5 the appointment of an 'ad hoc' committee to deal with a specific item of business;

3.11.6.1.6 that a member be not further heard.

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

3.11.6.3 If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote. Subject to paragraph 3.8, the mover of a motion shall have a maximum of 5 minutes to move and 5 minutes to reply. Once a motion has been moved, no Director shall speak more than once or for more than 5 minutes.

3.12 Motion to Rescind a Resolution

3.12.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors, and before considering any such motion of which notice shall have been

given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

- 3.12.2 When any such motion has been dealt with by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he or she considers it appropriate. This Standing Order 3.12.2 shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

3.13 Voting

- 3.13.1 Except as stated otherwise in the constitution or these Standing Orders, every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 3.13.2 If the number of non-executive Directors (including the Chair) in a meeting of the Board of Directors is equal to the number of executive Directors, the Chair (and in his absence, the Deputy Chair), shall have a casting vote at meetings of the Board of Directors in accordance with these Standing Orders.
- 3.13.3 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.13.4 If at least one-third of the Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.
- 3.13.5 If a Director so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.13.6 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.13.7 An Officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.14 Minutes

- 3.14.1 The minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.
- 3.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting. Minutes shall be retained in the Chief Executive's office
- 3.14.3 Board minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 3.14.4 As soon as practicable after holding a meeting, the Board of Directors shall send a copy of the minutes of the meeting to the Council of Governors.

3.15 Suspension of Standing Orders

- 3.15.1 Any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one non-Executive Director, and that a majority of those present vote in favour of suspension.
- 3.15.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 3.15.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
- 3.15.4 No formal business may be transacted while SOs are suspended.
- 3.15.5 The Audit Committee shall review every decision to suspend SOs.

3.16 Variation and Amendment of Standing Orders

- 3.16.1 These Standing Orders shall be amended only if:
 - 3.16.1.1 relevant notice of a meeting has been served in accordance with SO3.3;
 - 3.16.1.2 a notice of motion under SO 3.9 has been given;
 - 3.16.1.3 a majority of Non-Executive Directors vote in favour of amendment;
 - 3.16.1.4 at least two-thirds of the Directors are present; and
 - 3.16.1.5 the variation proposed does not contravene the Regulatory Framework, or any other statutory provisions.

3.17 Record of Attendance

- 3.17.1 The names of the Directors present at the meeting shall be recorded in the minutes.

3.18 Quorum

- 3.18.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors are present including at least one Executive Director and one non-Executive Director and the Chair.
- 3.18.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.18.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO7) he or she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the recommendations of the Remuneration and Terms of Service Committee).

3.19 Meetings: Electronic Communication

- 3.19.1 In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory

modification or re-enactment thereof.

- 3.19.2 A Director in electronic communication with the Chair and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he or she has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 3.19.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
- 3.19.4 The Minutes of a meeting held in this way MUST state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

4. Arrangements for the Exercise of Functions by Delegation

- 4.1 Subject to SO2.6 and such guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of SO 5.1 below or by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board of Directors considers appropriate. Delegated Powers are defined in a separate document (the Scheme of Delegation). That document has effect as if incorporated into these Standing Orders.
- 4.2 Emergency Powers
 - 4.2.1 The powers which the Board of Directors has retained to itself within these SOs may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.
- 4.3 Delegation to committees
 - 4.3.1 The Board of Directors shall agree from time to time to the delegation of Executive powers to be exercised by committees or subcommittees, or joint committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific Executive powers shall be approved by the Board of Directors.
- 4.4 Delegation to Officers
 - 4.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or joint-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he or she will perform personally and shall nominate Officers to undertake the remaining functions for which he or she will still retain accountability to the Board of Directors.
 - 4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
 - 4.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director or other Executive Director to

provide information and advise the Board in accordance with any statutory requirements. Outside these statutory requirements the Finance Director shall be accountable to the Chief Executive for operational matters.

4.4.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs.

4.5 Duty to Report Non-Compliance with Standing Orders

4.5.1 If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

5. Committees

5.1 Appointment of Committees

5.1.1 Subject to SO2.6 the Board of Directors may appoint committees of the Trust consisting wholly of Directors.

5.1.2 A committee appointed under SO5.1.1 may, subject to such guidance as may be given by the Board of Directors or other health service bodies in question, appoint sub-committees consisting wholly of Directors.

5.1.3 The SOs of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, in which case the term "Chair" is to be read as a reference to the Chair of the committee as the context permits, and the term "member" is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Trust in public.)

5.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation. Such terms of reference shall have effect as if incorporated into the SOs.

5.1.5 Where committees are authorised to establish sub-committees they may not delegate Executive powers to the sub-committee unless expressly authorised by the Board of Directors.

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

5.1.7 The Board may also operate as a committee in accordance with SO 4.3.2. Any decisions taken by the Board in Committee (i.e. Seminar meeting of the Board) must be brought to the next meeting of the Board.

5.2 Confidentiality

5.2.1 A member of a committee shall not disclose a matter dealt with, by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

5.2.2 A Director or a member of a committee shall not disclose any matter reported to

the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

6. Interface between the Board of Directors and the Council of Governors

- 6.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution.
- 6.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
- 6.3 The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report.
- 6.4 The annual reports shall give information on:
 - 6.4.1 the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the principal purpose;
 - 6.4.2 any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its Public Constituency is representative of those eligible for such Membership; and
 - 6.4.3 any exercise by the Council of Governors of its power to require a Director to attend a meeting;
 - 6.4.4 the Trust's policy on pay, on the work of the committee of non-executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors, and on such other procedures as the Trust has on pay;
 - 6.4.5 the remuneration of the Directors and on the expenses of the Governors and the Directors; and
 - 6.4.6 any other information Monitor requires.
- 6.5 The Trust shall comply with any decision Monitor makes as to:
 - 6.5.1 the form of the reports;
 - 6.5.2 when the reports are to be sent to it; and
 - 6.5.3 the periods to which the reports are to relate.
- 6.6 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 39 and/or 40 of the Constitution is included on the Agenda for a meeting of the Board of Directors.
- 6.7 If the Council of Governors so desires such a matter as described within SO 6.5 to be included on an Agenda item, they shall make their request in writing to the Chair at least 14 Clear Days before the meeting of the Board of Directors, subject to SO 3.3. The Chair shall decide whether the matter is appropriate to be included on the Agenda. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chair.

7. Declarations of Interests and Register of Interests

- 7.1 The Regulatory Framework requires members of the Board of Directors to declare to the

Secretary:

- 7.1.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved or likely to be involved in making as described in Standing Orders 7.7.2 and 7.7.7; and
 - 7.1.2 any actual or potential, direct or indirect, non-financial professional interest which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 7.7.4 and 7.7.7; and
 - 7.1.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Order 7.7.5 and 7.7.7.
- 7.2 All existing members of the Board of Directors should declare such interests as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently should do so on appointment.
- 7.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the SOs and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within 7 Clear Days of becoming aware of the existence of a material interest.
- 7.4 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and the Chair shall then decide what action to take. This may include excluding the Director from discussions on the matter and/or prohibiting the Director from voting on any question with respect to the matter. Subject to Standing Orders 7.7.3 and 7.7.4, if a Director has declared a financial interest (as described in Standing Order 7.7.2) he or she shall not take part in the consideration or discussion of the matter.
- 7.5 Any interest declared at a meeting of the Board of Directors and any subsequent action taken, should be recorded in the minutes of the Board of Director's meeting at which the interest was declared. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 7.6 Directors' interests will be disclosed in the Trust's Annual Report, at least to comply with the Financial Reporting Manual as published by Monitor, but the Annual Report may also refer to the published declaration of interests of Directors.
- 7.7 Nature of Interests
- 7.7.1 Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by Monitor.
 - 7.7.2 A financial interest is where a Director may receive direct financial benefits (by either making a gain or avoiding a loss) from the consequences of a decision of the Trust. This could include:
 - 7.7.2.1 directorships, including non-executive directorships held in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
 - 7.7.2.2 employment in an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or

- 7.7.2.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding.
- 7.7.3 A Director shall not be treated as having a financial interest in any matter by reason only:
 - 7.7.3.1 of shares or securities held in collective investment or pensions funds or units of authorised unit trusts; or
 - 7.7.3.2 of an interest in any company, body or person with which he or she is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that matter.
- 7.7.4 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a financial interest for the purpose of this SO.
- 7.7.5 A non-financial professional interest is where a Director may obtain a non-financial professional benefit from the consequence of a decision that the Trust makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a Director is:
 - 7.7.5.1 an advocate for a particular group of patients; or
 - 7.7.5.2 a clinician with a special interest; or
 - 7.7.5.3 an active member of a particular specialist body; or
 - 7.7.5.4 an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.
- 7.7.6 A non-financial personal interest is where a Director may benefit personally from a decision that the Trust makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where the Director is:
 - 7.7.6.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or
 - 7.7.6.2 a member of a lobbying or pressure group with an interest in health and/or social care.
- 7.7.7 A Director will be treated as having an indirect financial interest, non-financial professional interest or non-financial personal interest where he or she has a close association with another individual who has a financial interest, a non-financial professional interest, or a non-financial personal interest who would stand to benefit from a decision of the Trust. This includes material interests of:
 - 7.7.7.1 close family members and relatives, including a spouse, partner, parent, child or sibling;
 - 7.7.7.2 close friends and associates; and
 - 7.7.7.3 business partners.
- 7.8 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chief Executive. Influence rather than the immediacy of the relationship

is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

7.9 SO 7 applies to any committee, sub-committee of the Board of Directors and applies to any member of any such committee or sub-committee (whether or not he or she is also a Director).

7.10 **Register of Interests**

7.10.1 The Register of Interests shall contain the names of each Director, whether he or she has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.

7.10.2 The Secretary must amend the appropriate Register of Interests within 3 Clear Days of receipt of a declaration of a material interest made under SO 7.3.

7.10.3 The Register of Interests will be available to the public and the Chair will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register of Interests must be provided to Members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register of Interests.

7.10.4 In establishing, maintaining, updating and publicising the Register of Interests, the Trust shall comply with all guidance issued from time to time by Monitor. The details of Directors' interests recorded in the Register of Interests will be kept up to date by means of a regular review as necessary of the Register of Interests by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

8. **Standards of Business Conduct**

8.1 Policy

8.1.1 Directors and Officers should comply with the NHS Foundation Trust Code of Governance 2006, the Trust Code of Conduct and Department of Health Guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" and the "Code of Conduct for NHS Managers 2002 ". This section of SOs should be read in conjunction with these documents.

8.2 Canvassing of, and Recommendations by, Directors in Relation to Appointments

8.2.1 Canvassing of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.

8.2.2 A Director of the Board of Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this SO shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

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

8.3 Relatives of Directors or Officers

8.3.1 Candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if

appointed, render him or her liable to instant dismissal.

8.3.2 The Directors and every member and Officer of the Trust shall disclose to the Chief Executive any relationship between himself or herself 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 Trust any such disclosure made.

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

8.3.4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 7 shall apply.

8.4 External Consultants

8.4.1 SO8 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

9. Tendering and Contract Procedure

9.1 Duty to comply with Standing Orders

9.1.1 The procedure for making all contracts by or on behalf of the Trust shall comply with these SOs (except where SO 3.15 is applied).

9.2 EU Directives Governing Public Procurement

9.2.1 European Union Directives on public sector purchasing and the Public Procurement Regulations implementing them into UK law, shall take precedence over these SOs with regard to procedures for awarding all forms of contracts, and shall have effect as if incorporated in these SOs.

9.2.2 The Trust shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" and associated relevant guidance issued by Monitor in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS". The Trust will also comply with the Guidance from Monitor entitled "Best Practice in Making Investments" and the Regulatory Framework.

9.2.3 The Tendering and Contract Procedure is governed by 3 ranges of expenditure (refer to the Scheme of Delegation):

9.2.3.1 Formal Competitive Tendering details are contained in SO9.3.

9.2.3.2 Competitive Quotations details are contained in SO9.4.1-9.4.; and

9.2.3.3 Expenditure where Tendering or Competitive Quotations are not required (details are contained in SO10).

9.3 Formal Competitive Tendering

9.3.1 The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the DoH); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.

- 9.3.2 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in (9.3.2.5) to (9.3.2.8) below) where:
- 9.3.2.1 the estimated expenditure does not, or is not reasonably expected to, exceed £25,000 (this figure to be reviewed annually); or
 - 9.3.2.2 the estimated expenditure is expected to exceed £25,000 (this figure to be reviewed annually) but does not, or is not reasonably expected to exceed the applicable threshold for the purchase under the Public Procurement Regulations; or
 - 9.3.2.3 by virtue of Part 1 of the Public Contracts Regulations 2015 or Part 2, Chapter 2 of the Concessions Contracts Regulations, the contract does not require a tendering process; or
 - 9.3.2.4 the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with;
 - 9.3.2.5 the timescale genuinely precludes competitive tendering (and this complies with any applicable Public Procurement Regulations). Failure to plan the work properly is not a justification for single tender; or
 - 9.3.2.6 after considering the specification, specialist expertise is required and is available from only one source (and this complies with any applicable Public Procurement Regulations); or
 - 9.3.2.7 the task is essential to complete the project, **AND** arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate (and this complies with any applicable Public Procurement Regulations); or
 - 9.3.2.8 there is a clear benefit to be gained from maintaining continuity with an earlier project (and this complies with any applicable Public Procurement Regulations). However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
 - 9.3.2.9 where provided for in the Capital Investment Manual.
- 9.3.3 The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.
- 9.3.4 Where it is decided that competitive tendering is not applicable and should be waived by virtue of 9.3.2.5 to 9.3.2.8 above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Board of Directors in a formal meeting and the provisions of the applicable Public Procurement Regulations complied with.
- 9.3.5 Except where SO 9.3, or a requirement under SO 9.2, applies, the Board of Directors shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the

goods or materials or to undertake the services or works required.

- 9.3.6 The Board of Directors shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists [see Appendix of the Standing Financial Instructions]. Where in the opinion of the Finance Director it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive.
- 9.3.7 The Tendering Procedure is set out in Appendix 1 to the Standing Financial Instructions.
- 9.3.8 The Board of Directors shall review the Tendering Procedure not less than every two years.

9.4 Quotations

- 9.4.1 Quotations are required where formal tendering procedures are waived under SO9.3.2.1 or SO9.3.2.2 and where the intended expenditure or income exceeds, or is reasonably expected to exceed the limits defined in the Scheme of Delegation.
- 9.4.2 Where quotations are required under SO 9.3 they should be obtained from at least three firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Board of Directors.
- 9.4.3 Quotations should be in writing unless the Chief Executive or his Nominated Officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 9.4.4 All quotations must be treated as confidential and should be retained for inspection.
- 9.4.5 The Chief Executive or his Nominated Officer should evaluate the quotations and select the one which gives value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record and approved by the Chief Executive and the Director of Finance.
- 9.4.6 Non-competitive quotations in writing may be obtained for the following purposes:
 - 9.4.6.1 the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or his Nominated Officer, possible or desirable to obtain competitive quotations;
 - 9.4.6.2 the goods/services are required urgently. The approval of the Director of Resources or his Nominated Officer will be required for this course of action.
- 9.4.7 Where tenders or quotations are not required, because expenditure is below the limits set in the Scheme of Delegation, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board of Directors.
- 9.4.8 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board of Directors may also determine from time to time that in house services should be market tested by competitive tendering (SO11).

9.5 Private Finance

- 9.5.1 When the Board of Directors proposes, or is required, to use finance provided by

the private sector the following should apply:

- 9.5.1.1 The Chief Executive and Finance Director shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
- 9.5.1.2 The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to *vires*.
- 9.5.1.3 The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

9.6 Contracts (including lease contracts)

9.6.1 The Trust may only enter into contracts within its statutory powers and shall comply with:

- 9.6.1.1 these SOs;
- 9.6.1.2 the Trust's SFIs;
- 9.6.1.3 EU Directives and other statutory provisions;
- 9.6.1.4 any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants; and
- 9.6.1.5 such of the NHS Standard Contract Conditions as are applicable.

Where required by the Public Procurement Regulations contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

9.6.2 Contracts shall include lease and hire purchase agreements.

9.6.3 In all contracts made by the Trust, the Board shall endeavour to obtain value for money. The Chief Executive shall nominate an Officer who shall oversee and manage each contract on behalf of the Trust.

9.7 Personnel and Agency or Temporary Staff Contracts

9.7.1 The Chief Executive shall nominate Officers with delegated authority to enter into contracts for the employment of other Officers, to authorise regarding of staff, and enter into contracts for the employment of agency staff or temporary staff service contracts.

9.8 Healthcare Services Agreements

9.8.1 Healthcare Services contracts made between two NHS organisations for the supply of healthcare services, will be legally binding contracts based on the models issued by the Department of Health.

9.8.2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.

9.9 Cancellation of Contracts

9.9.1 Except where specific provision is made in model forms of contracts or standard schedules of conditions approved for use within the NHS, there shall be inserted in

every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if:

9.9.1.1 the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust; or

9.9.1.2 for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or her or acting on his behalf (whether with or without the knowledge of the contractor); or

9.9.1.3 if in relation to any contract with the Trust the contractor or any person employed by him or her or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1989 and 1916, the Bribery Act 2010, and other appropriate legislation.

9.9.2 Where a contract is subject to the Public Procurement Regulations in full, that contract shall also include the termination clauses required by the applicable Regulation.

9.10 Determination of Contracts for Failure to Deliver Goods or Material

9.10.1 There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered.

9.10.2 The clause referred to at 9.10.1 shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

9.11 Contracts Involving Funds held on Trust

9.11.1 Contracts involving Funds held on Trust shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

10. Disposals

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

10.1.1 any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his Nominated Officer;

10.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;

- 10.1.3 items to be disposed of with an estimated sale value of less than £1,000, this figure to be reviewed annually.
- 10.1.4 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- 10.1.5 land or buildings concerning which DoH guidance has been issued but subject to compliance with such guidance; or
- 10.1.6 any matter which Monitor has issued alternate specific guidance in relation to.

11. **In-House Services**

- 11.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
 - 11.1.1 Specification group, comprising the Chief Executive or Nominated Officer(s) and specialist(s).
 - 11.1.2 In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
 - 11.1.3 Evaluation group, comprising normally a specialist Officer, a supplies Officer and a Finance Director representative. For services having a likely annual expenditure exceeding £500,000, a non-Officer member should be a member of the evaluation team.
- 11.2 All groups should work independently of each other but individual Officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
- 11.3 The evaluation group shall make recommendations to the Board of Directors.
- 11.4 The Chief Executive shall nominate an Officer to oversee and manage the contract.

12. **Custody of Seal and Sealing of Documents**

- 12.1 Custody of Seal
 - 12.1.1 The Common Seal of the Trust shall be kept by the Chief Executive or Nominated Officer in a secure place.
- 12.2 Sealing of Documents
 - 12.2.1 The Common Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers.
 - 12.2.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating Directorate).
- 12.3 Register of Sealing
 - 12.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors at least quarterly.

13. **Signature of Documents**

- 13.1 Where the signature of any document will be a necessary step in legal proceedings involving

the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.

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

14. **Miscellaneous**

14.1 Standing Orders to be given to Members and Officers

- 14.1.1 It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. 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 of SOs.

14.2 Documents having the standing of Standing Orders

- 14.2.1 Standing Financial Instructions and the Scheme of Delegation shall have the effect as if incorporated into SOs.

14.3 Review of Standing Orders

- 14.3.1 Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

14.4 **Corporate Documents** – Specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.