

Draft Constitution for Oxford University Hospitals NHS Foundation Trust

Incorporates points from SHA feedback received (19.07.2012).

Amendments incorporated from DAC Beachcrofts LLP (17.10.2012) to ensure compliance with Health and Social Care Act 2012.

Sections of the national Model Constitution which are proposed to be removed or amended are highlighted in yellow.

Amendments which would result from recommendations made as a result of public consultation are highlighted in blue.

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Draft Constitution

1. Interpretation and definitions

- 1.1. Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice versa.
- 1.3. 'the 2006 Act' is the National Health Service Act 2006.
- 1.4. 'the 2012 Act' is the Health and Social Care Act 2012.
- 1.5. 'Annual Members' Meeting' is defined in paragraph 10 of the constitution.
- 1.6. 'constitution' means this constitution and all annexes to it.
- 1.7. 'Council Member' means a member of the Council of Governors.
- 1.8. 'Monitor' is the corporate body known as Monitor, as provided by Section 31 of the 2006 Act.
- 1.9. 'the 'Accounting Officer' is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

2. Name

The name of the foundation trust is Oxford University Hospitals NHS Foundation Trust ('the trust').

3. Principal purpose

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

4. Powers

- 4.1. The powers of the trust are set out in the 2006 Act.
- 4.2. All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.3. Any of these powers may be delegated to a committee of directors or to an executive director.

5. Membership and constituencies

- 5.1. The trust shall have members, each of whom shall be a member of one of the following constituencies:
 - 5.1.1. a public constituency, and
 - 5.1.2. a staff constituency.

6. Application for membership

- 6.1. An individual who is eligible to become a member of the trust may do so on application to the trust.
- 6.2. To be a member of the trust, an individual must be at least sixteen years old on the date of their application to be a member.

7. Public Constituency

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

8. Staff Constituency

- 8.1. An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided that:
 - 8.1.1. he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2. he has been continuously employed by the trust under a contract of employment for at least 12 months.
- 8.2. Individuals who exercise functions for the purposes of the trust¹ through a contract of employment with the University of Oxford within its Medical Sciences Division may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3. In addition, any individual who is registered with the trust as a volunteer and who exercises functions on behalf of the trust may become or continue as a member of the staff constituency provided he has been so registered and exercising such functions continuously for a period of at least 12 months.
- 8.4. Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.5. 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.
- 8.6. The minimum number of members in each class of the Staff Constituency is specified in Annex 2: The Staff Constituency.
- 8.7. *Automatic membership by default – staff*
 - 8.7.1. Subject to paragraph 8.7.2, an individual who is:
 - 8.7.1.1. eligible to become a member of the Staff Constituency, and
 - 8.7.1.2. invited by the trust to become a member of the Staff Constituency and appropriate class within the Staff Constituency,

¹ We have deleted the words in an attempt to make this sentence slightly clearer.

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

8.7.2. An individual who:

8.7.2.1. is eligible to become a member of the staff Constituency pursuant to paragraph 8.2 above through his contract of employment with the University of Oxford in the Medical Sciences Division, and

8.7.2.2. does not hold an honorary consultant contract award with the trust; or

8.7.2.3. is employed to provide services at the Trust's property under the Private Finance Initiative; or

8.7.2.4. is seconded by the Trust to a Private Finance Initiative provider under Retention of Employment regulations;

shall become a member of the trust as a member of the Staff Constituency and appropriate class within the Staff Constituency by making an application to the trust to become a member of the relevant class of the Staff Constituency. For the avoidance of doubt, an individual who holds an honorary consultant contract award with the Trust shall become a member in accordance with paragraph 8.7.1.

[Model Section 9 removed as OUH does not propose having a patient Constituency]

9. Restriction on membership

- 9.1. An individual who is a member of a constituency, or of a class within a constituency, may not while his membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2. An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3. Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8: Further provisions.

10. Annual Members' Meeting²

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

11. Council of Governors – composition

- 11.1. The trust is to have a Council of Governors, which shall comprise both elected and appointed Council Members.
- 11.2. The composition of the Council of Governors is specified in Annex 3: Composition of Council of Governors.
- 11.3. The members of the Council of Governors, other than the appointed Council Members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Council Members to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

12. Council of Governors – election of Council Members

- 12.1. Elections for elected members of the Council of Governors shall be conducted in accordance with Annex 4: Model Election Rules.

² Foundation Trusts are required under paragraphs 27A(1) and (2) to hold an annual members meeting open to the public. Inclusion of this paragraph is suggested but not mandatory.

- 12.2. The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust's Authorisation are at Annex 4.
- 12.3. A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 44 (Amendment of the constitution).
- 12.4. An election, if contested, shall be by secret ballot.

13. Council of Governors - tenure

- 13.1. Subject to the provisions in Annex 5: Additional Provisions – Council of Governors, an elected Council Member may hold a term of office of up to 3 years.
- 13.2. An elected Council Member shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 13.3. An elected Council Member shall be eligible for re-election at the end of his term.
- 13.4. An appointed Council Member may hold office for a period of up to three years.
- 13.5. An appointed Council Member shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 13.6. An appointed Council Member shall be eligible for re-appointment at the end of his term.
- 13.7. No Council Member shall serve as a Council Member for more than two terms of office of up to three years each.

14. Council of Governors – disqualification and removal

- 14.1. The following may not become or continue as a member of the Council of Governors:
- 14.1.1. a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
 - 14.1.2. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 14.1.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 14.2. Council Members must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.3. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5: Additional Provisions – Council of Governors, where details are also provided of how membership of the Council of Governors may be suspended or terminated.

15. Council of Governors – duties of Council Members³

- 15.1. The general duties of the Council of Governors are:
- 15.1.1. to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
 - 15.1.2. to represent the interests of the members of the trust as a whole and the interests of the public.
- 15.2. The trust must take steps to secure the Council Members are equipped with the skills and knowledge they require in their capacity as such

³ This reflects paragraph 10A and 10B of Schedule 7 to the 2006 Act and Monitor's latest model core constitution.

16. Council of Governors – meetings of Council Members

- 16.1. The chairman of the trust (i.e. the chairman of the Board of Directors, appointed in accordance with the provisions of **paragraph 26 or 25 below**) or, in his absence, the deputy chairman (appointed in accordance with the provisions **of paragraph 27.1 below**), shall preside at meetings of the Council of Governors.
- 16.2. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons as set out in Annex 6.
- 16.3. For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.⁴

17. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6: Standing Orders for the Practice and Procedure of the Council of Governors.

18. Council of Governors – referral to the Panel⁵

- 18.1. In this paragraph 18, the Panel means a panel of persons appointed by Monitor to which a Council Member of an NHS foundation trust may refer a question as to whether the trust has failed or is failing:
- 18.1.1. to act in accordance with its constitution, or
- 18.1.2. to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 18.2. A Council Member may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

19. Council of Governors - conflicts of interest of Council Members

If a Council Member has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Council Member shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. Annex 6: Standing Orders for the Practice and Procedure of the Council of Governors makes provision for the disclosure of interests and arrangements for the exclusion of a Council Member declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of Governors – travel expenses

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

21. Council of Governors – further provisions

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

22. Board of Directors – composition

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

⁴ This reflects paragraph 10C of Schedule 7 to the 2006 Act and Monitor's latest model core constitution.

⁵ This reflects Section 39A of the 2006 Act and Monitor's latest model core constitution.

- 22.2.1. a non-executive chairman;
- 22.2.2. up to 7 non-executive directors; and
- 22.2.3. up to 7 executive directors.

22.3. The number of voting non-executive and executive directors shall comply with paragraph 22.10 below.

22.4. The University of Oxford may nominate a non-executive director, who will be appointed in accordance with the appointment process mandated by the 2006 Act⁶

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

22.6. The Chief Executive shall be the Accounting Officer.

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

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

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

22.10. The Board of Directors shall at all times be constituted so that the number of voting non-executive directors (excluding the chairman) equals or exceeds the number of voting executive directors.

23. Board of Directors – general duty⁷

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

24. Board of Directors – qualification for appointment as a non-executive Director

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

- 24.1.1. he is a member of a Public Constituency, or
- 24.1.2. where any of the trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and
- 24.1.3. he is not disqualified by virtue of paragraph 30 below.

25. Board of Directors – appointment and removal of chairman and other non-executive directors

25.1. The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors. The appointment of the chairman or any other non-executive directors shall be in accordance with Annex 8: Further provisions and subject to paragraph 26 below.

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

25.3. The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 26 below.

26. Board of Directors: appointment of initial chairman and initial non-executive directors

26.1. The Council of Governors shall appoint the chairman of the applicant NHS Trust as the initial chairman of the trust, if he wishes to be appointed.

⁶ Whilst the University can nominate a representative to be a non-executive director, the constitution cannot prescribe that the Council of Governors (whose statutory role it is to appoint non-executives) must appoint a University non-executive. In view of this, the wording is qualified by saying that the University may nominate a non-executive, who will be appointed in accordance with the appointment process mandated by the 2006 Act.

⁷ This reflects paragraph 18A of Schedule 7 to the 2006 Act and Monitor's latest model core constitution.

- 26.2. The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the chairman) who wish to be appointed.
- 26.3. The criteria for qualification for appointment as a non-executive director set out in paragraph 24.1 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 26.4. An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as chairman or (as the case may be) non-executive director of the applicant NHS Trust but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

27. Board of Directors: appointment of deputy chairman and of senior independent director

- 27.1. The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as deputy chairman.
- 27.2. The Board of Directors shall appoint one of the non-executive directors as senior independent director in consultation and agreement with the Council of Governors.

28. Board of Directors: appointment and removal of the Chief Executive and other executive directors

- 28.1. The non-executive directors shall appoint or remove the Chief Executive⁸.
- 28.2. The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3. The initial Chief Executive is to be appointed in accordance with paragraph 29 below.
- 28.4. A committee consisting of the chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

29. Board of Directors: appointment and removal of initial Chief Executive

- 29.1. The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he wishes to be appointed.
- 29.2. The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

30. Board of Directors – disqualification

- 30.1. The following may not become or continue as a member of the Board of Directors:
- 30.1.1. a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
 - 30.1.2. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it; or
 - 30.1.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

⁸ This wording is required to reflect the statutory provision in Paragraph 17(3) of Schedule 7 to the 2006 Act (as amended).

31. Board of Directors – meetings⁹

- 31.1. Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 31.2. 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.

32. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7: Standing Orders for the Practice and Procedure of the Board of Directors.

33. Board of Directors - conflicts of interest of directors

- 33.1. The duties that a director of the trust has by virtue of being a director include in particular:¹⁰
- 33.1.1. 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.
- 33.1.2. 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.
- 33.2. The duty referred to in sub-paragraph 33.1.1 is not infringed if:
- 33.2.1. the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 33.2.2. the matter has been authorised in accordance with the constitution.
- 33.3. The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4. In sub-paragraph 33.1.2, "third party" means a person other than:
- 33.4.1. the trust, or
- 33.4.2. a person acting on its behalf.
- 33.5. If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 33.6. If a declaration under this paragraph provides to be, or becomes inaccurate, incomplete, a further declaration must be made.
- 33.7. Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 33.8. This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.9. A director need not declare an interest:
- 33.9.1. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 33.9.2. if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:
- 33.9.2.1. by a meeting of the Board of Directors, or
- 33.9.2.2. by a committee of the directors appointed for the purpose under the constitution.
- 33.10. Annex 7: Standing Orders for the Practice and Procedure of the Board of Directors make provision for the disclosure of interests and arrangements for the exclusion of a director

⁹ These provisions reflect paragraphs 18D and 18E of Schedule 7 to the 2006 Act and Monitor's latest version of the model core constitution.

¹⁰ These provisions reflect paragraphs 18B and 18C of Schedule 7 to the 2006 Act and Monitor's latest version of the model core constitution.

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

34. Board of Directors – remuneration and terms of office

- 34.1. The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the chairman and the other non-executive directors.
- 34.2. The trust shall establish a committee of non-executive directors, **to be known as the Remuneration and Appointments Committee**, to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

35. Registers

- 35.1. The trust shall have:
- 35.1.1. a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
 - 35.1.2. a register of members of the Council of Governors;
 - 35.1.3. a register of interests of members of the Council of Governors;
 - 35.1.4. a register of directors; and
 - 35.1.5. a register of interests of the directors.

36. Registers – inspection and copies

- 36.1. The trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2. The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.
- 36.3. So far as the registers are required to be made available:
- 36.3.1. they are to be available for inspection free of charge at all reasonable times; and
 - 36.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4. 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.

37. Documents available for public inspection

- 37.1. The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:¹¹
- 37.1.1. a copy of the current constitution;
 - 37.1.2. a copy of the latest annual accounts and of any report of the auditor on them; and
 - 37.1.3. a copy of the latest annual report.
- 37.2. The trust shall also make the following documents relating to a special administration of the trust available for inspection by member of the public free of charge at all reasonable times:
- 37.2.1. a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65K (action following Secretary of State rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

¹¹ This has been amended to reflect paragraph 22 of Schedule 7 to the 2006 Act and the latest version of Monitor's model core constitution.

- 37.2.2. a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.3. a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.4. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 37.2.5. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 37.2.6. 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;
 - 37.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 37.2.8. a copy of any final report published under section 65I (administrator's final report);
 - 37.2.9. 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;
 - 37.2.10. a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4. 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.

38. Auditor

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

39. Audit committee

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

40. Accounts

- 40.1. The trust must keep proper accounts and proper records in relation to the accounts.¹²
- 40.2. Monitor may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.¹³
- 40.3. The accounts are to be audited by the trust's auditor.
- 40.4. The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.¹⁴
- 40.5. The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

41. Annual report, forward plans and non-NHS work

- 41.1. The trust shall prepare an Annual Report and send it to Monitor.

¹² This reflects paragraph 24(1) of Schedule 7 to the 2006 Act.

¹³ This reflects paragraph 24(1A): initial arrangement for accounts. In time, the initial arrangements will be varied to enable the Secretary of State with the approval of Treasury to give directions as to FT accounts but for now, this reflects the current position and that reflected in Monitor's model core constitution.

¹⁴ See footnote above.

- 41.2. The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 41.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 41.4. In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 41.5. Each forward plan must include information about:¹⁵
- 41.5.1. the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on; and
 - 41.5.2. the income it expects to receive from doing so.
- 41.6. Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must:
- 41.6.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions; and
 - 41.6.2. notify the directors of the trust and its determination.
- 41.7. A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of council of governors of the trust voting approve its implementation.

42. Presentation of the annual accounts and reports to the Council of Governors and members

- 42.1. The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1. The annual accounts.
 - 42.1.2. Any report of the auditor on the annual accounts.
 - 42.1.3. The annual report.
- 42.2. The documents shall also be presented to the members of the trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.¹⁶
- 42.3. The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

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. Amendment of the constitution

- 44.1. The trust may make amendments of its constitution only if:¹⁷
- 44.1.1. more than half of the members of the Council of Governors of the trust voting approve the amendments, and
 - 44.1.2. more than half of the members of the Board of Directors of the trust voting approve the amendments.

¹⁵ Wording reflects paragraph 43 of the 2006 Act and the latest version of Monitor's model core constitution.

¹⁶ This reflects paragraph 27A(3) of Schedule 7 to the 2006 Act and the latest version of Monitor's model core constitution.

¹⁷ This paragraph reflects section 37(1) of the 2006 Act and Monitor's latest version of the model core constitution.

- 44.2. Amendments made under paragraph 44 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.¹⁸
- 44.3. Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise in respect to the role that the Council of Governors has as part of the trust):
- 44.3.1. at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
- 44.3.2. the trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4. If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.¹⁹
- 44.5. Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.²⁰

45. Mergers etc. and significant transactions

- 45.1. The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.²¹
- 45.2. The trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.²²
- 45.3. "significant transaction" means a transaction which meets the definition of significant transactions as given in Monitor's *Compliance Framework 2012/13* and as amended.²³

¹⁸ This paragraph reflects sections 37(2) and (3) of the 2006 Act.

¹⁹ This reflects paragraphs 27A(4) and 27A(5) of Schedule 7 to the 2006 Act.

²⁰ This reflects section 37(4) of the 2006 Act and Monitor's latest model core constitution.

²¹ This reflects section 56(1A) of the 2006 Act and Monitor's latest model core constitution.

²² This reflects section 51A(1) of the 2006 Act and Monitor's latest model core constitution.

²³ The trust may insert descriptions of significant transactions pursuant to section 51A(2) of the 2006 Act (e.g. by reference to the Compliance Framework. Alternatively, if the trust does not wish to specify any descriptions of significant transactions, the constitution must specify that it contains no such descriptions (section 51A(3) of the 2006 Act. Trust to delete/amend accordingly.

Annex 1: The Public Constituency

1. The areas for a Public Constituency shall be as shown below.
2. The areas numbered 1 to 5 below shall be the local authority district council areas and include all those resident in all electoral wards of these areas.
3. The area numbered 6 below shall be all of the local authority council areas within the counties listed and include all those resident in all electoral wards of these areas.
4. The area numbered 7 below shall be all counties within England not included within areas 1–6 and all counties in Wales and include all those resident in all electoral wards of these areas.

	<i>Local authority</i>	<i>Minimum number of members</i>
1	Cherwell District Council	100
2	Oxford City Council	100
3	South Oxfordshire District Council	100
4	Vale of White Horse District Council	100
5	West Oxfordshire District Council	100
6	Buckinghamshire, Berkshire, Northamptonshire, Warwickshire, Gloucestershire and Wiltshire	100
7	Rest of England and Wales	50
	Total public membership minimum	650

6	Buckinghamshire, Berkshire, Gloucestershire and Wiltshire	50
7	Northamptonshire and Warwickshire	50
8	Rest of England and Wales	
	Total public membership minimum	650

Annex 2: The Staff Constituency

1. There will be two classes of staff members within the Staff Constituency as follows:
 - 1.1. groups of staff categorised in the trust's Electronic Staff Record as administrative and clerical, estates and ancillary staff will be assigned to the 'non-clinical' staff class; and
 - 1.2. staff employed to provide services at the Trust's property under the Private Finance Initiative, seconded by the Trust to a Private Finance Initiative provider under Retention of Employment regulations or who work as volunteers for the Trust will be assigned to the 'non-clinical' staff class; and
 - 1.3. allied health professionals, additional clinical services, healthcare scientists, medical and dental, nurses and midwives and professional scientific and technical staff will be assigned to the 'clinical' staff class.
2. The minimum number of members within each class within the Staff Constituency shall be 300.

Annex 3: Composition of Council of Governors

1. The Composition of the Council of Governors is as shown.
2. Appointed Governors as required by statute shall be from:
 - 2.1. Oxfordshire County Council, whose area includes the whole or part of the area of the trust.
 - 2.2. University of Oxford²⁴
3. Other Governors are to be appointed by:
 - 3.1. Oxford Brookes University;
 - 3.2. Oxford Health NHS Foundation Trust;
 - 3.3. Oxfordshire Clinical Commissioning Group;²⁵
 - 3.4. Specialist Commissioner (nominated by NHS Commissioning Board); and
 - 3.5. Young People's Executive (YiPpEe), with the nominated Governor to be at least 16 years old.

	Seats	
Public constituency (elected):	15	
Area served by Cherwell District Council		2
Area served by Oxford City Council		2
Area served by South Oxfordshire District Council		2
Area served by Vale of White Horse District Council		2
Area served by West Oxfordshire District Council		2
Surrounding counties: Buckinghamshire, Berkshire, Northamptonshire, Warwickshire, Gloucestershire and Wiltshire		4
Rest of England and Wales		1
Staff constituency (elected):	6	
Clinical staff		5
Non-clinical staff		1
Appointed Governors required by statute:	2	
Oxfordshire County Council		1
University of Oxford		1
Other Governors:	5	
Oxford Brookes University		1
Oxford Health NHS FT		1
Oxfordshire Clinical Commissioning Group		1
Specialist Commissioner (nominated by NHS Commissioning Board)		1
Young person (nominated by Young People's Executive)		1
Total	28	

²⁴ On the basis that the University of Oxford provides a medical or dental school at the trust's hospital.

²⁵ There is no longer a requirement for a PCT governor. The trust may, but is not required to, replace the PCT governor with a governor from another commissioning body.

Or:

	Seats	
Public constituency (elected):	15	
Area served by Cherwell District Council		2
Area served by Oxford City Council		2
Area served by South Oxfordshire District Council		2
Area served by Vale of White Horse District Council		2
Area served by West Oxfordshire District Council		2
Buckinghamshire, Berkshire, Gloucestershire and Wiltshire		2
Northamptonshire and Warwickshire		2
Rest of England and Wales		1
Staff constituency (elected):	6	
Clinical staff		4
Non-clinical staff		2
Appointed Governors required by statute:	2	
Oxfordshire County Council		1
University of Oxford		1
Other Governors:	6	
Oxford Brookes University		1
Oxford Health NHS FT		1
Oxfordshire Clinical Commissioning Group		1
Oxfordshire Local Medical Committee		1
Specialist Commissioner (nominated by NHS Commissioning Board)		1
Young person (nominated by Young People's Executive)		1
Total	29	

Annex 4: Model Election Rules

1. Department of Health Model Election Rules will be used.
2. At the time of writing, the rules in place were dated October 2009 and published by Monitor at <http://www.monitor-nhsft.gov.uk>.

Annex 5: Additional Provisions – Council of Governors

1. Eligibility to be a member of the Council of Governors

- 1.1. Council Members must be at least 16 years of age at the date they are nominated for election or appointment.
- 1.2. A person may not become or continue as a Council Member of the trust if:
 - 1.2.1. in the case of an individual who is a member of the Public Constituency, he ceases to live in the area of the Public Constituency of which he is a member;
 - 1.2.2. in the case a member of a staff class of the Staff Constituency, he no longer meets the eligibility requirements of paragraph 8 of the constitution and of Annex 2;
 - 1.2.3. in the case of an appointed Council Member, the local authority, university or other organisation withdraws their sponsorship of him;
 - 1.2.4. he has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body (which shall have the meaning ascribed to it in section 9(4) of the 2006 Act);
 - 1.2.5. he 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 appointment is not in the interest of the health service;
 - 1.2.6. he is a Director of the trust, or a Council Member, executive director, non-executive director, chair, chief executive officer of another Health Service Body, or a body corporate whose business involves the provision of health care services unless he is appointed to represent that body as one of the trust's partner organisations; in such instances regard shall be given to any circumstances which may give rise to potential conflicts of interest to such a degree as to interfere with the person's proper exercise of their duties as a Council Member of this trust. Any doubt or question as to what constitutes a material conflict of interest for the purposes of this paragraph should be referred to the chairman of the trust whose decision on the matter will be final;
 - 1.2.7. he has had his 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 has not subsequently had his name included in such a list;
 - 1.2.8. he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
 - 1.2.9. he has refused without reasonable cause to undertake any training which the trust and/ or Council of Governors requires all Council Members to undertake;
 - 1.2.10. he is a member of a local authority Health Overview and Scrutiny Committee;
 - 1.2.11. he is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
 - 1.2.12. he is an occupant of the same household and/or he is an immediate family member of a Council Member or a director of the trust;
 - 1.2.13. he has failed to repay (without good cause) any amount of monies properly owed to the trust; or

1.2.14. he has failed to sign and deliver to the Head of Corporate Governance a statement in the form required by the trust confirming acceptance of the Council of Governors' Code of Conduct.

1.3. Where a person has been elected or appointed to be a Council Member and he becomes disqualified from office under paragraph 14 of the constitution or paragraph 1.2 of this Annex, he shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Head of Corporate Governance at the time of his taking office or later that the Council Member is so disqualified, the Head of Corporate Governance shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect. Upon dispatch of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Council Member.

2. Roles and Responsibilities of Council of Governors

2.1 The Council of Governors shall:

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

2.1.2 represent the interests of the members of the trust as a whole and the interests of the public.²⁶

2.2 The roles and responsibilities of Council of Governors are:

2.2.1 subject to paragraphs 25 and 26 of this constitution, to appoint or remove the chairman and the other non-executive directors. The removal of a non-executive director requires the approval of three-quarters of the members of the Council of Governors;

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

2.2.3 to appoint or remove the auditor;

2.2.4 to consider resolutions to remove a member of the trust pursuant to paragraph 3 of Annex 8, Appendix 1;²⁷

2.2.5 to consider resolutions to remove a Council Member pursuant to paragraph 5 of Annex 5;

2.2.6 to approve (by a majority of the Council of Governors voting) an appointment (by the non-executive directors) of the Chief Executive (and Accounting Officer) other than the initial Chief Executive appointed in accordance with paragraph 19 (5) of Schedule 7 of the 2006 Act;

2.2.7 to consider the annual accounts, any report of the Auditor on them and the annual report;

2.2.8 to require one or more directors to attend a meeting of the Council of Governors for the purpose 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);

2.2.9 to approve any merger, acquisition, separation or dissolution application in respect of the trust before the application is made to Monitor and the entering into of any significant transactions;

2.2.10 to respond as appropriate when consulted by the directors;

²⁶ This new role reflects paragraph 10A of Schedule 7 to the 2006 Act.

²⁷ Annex 8, Appendix 2 (Dispute Resolution) does not provide for disputes as to membership to be considered by the Council of Governors. It refers to the issue being referred to an independent arbitrator.

- 2.2.11 to approve amendments to the constitution pursuant to paragraph 44 of the constitution;
- 2.2.12 to appoint the deputy chairman; and/or
- 2.2.13 to determine issues in the forward plans regarding the proportion of the trust's activities and income relating to non-NHS income and implementation of the same pursuant to paragraph 41 of the constitution.

2.3 The Council of Governors also has the specific role and function of:

- 2.3.1 providing views to the Board of Directors on the strategic direction and annual plan of the trust;
- 2.3.2 developing the trust's membership;
- 2.3.3 representing the interests of the members;
- 2.3.4 regularly feeding back information about the trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected or appointed them;
- 2.3.5 complying with the NHS Foundation Trust Code of Governance and the Council of Governors' Code of Conduct; and
- 2.3.6 exercising other functions at the request of the Board of Directors.

3. **Council of Governors: Remuneration**

Governors of NHS Foundation Trusts are not, by law, allowed to be paid for their work. The trust will, however, meet travel, subsistence and out of pocket expenses incurred in carrying out duties as a member of the Council of Governors.

4. **Council of Governors: Vacancies**

Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply. Where the vacancy arises amongst the elected Council Members, the Council of Governors shall decide either to:

- (a) call an election within three months to fill the seat for the remainder of that term of office;
- (b) invite the next highest polling (runner-up) candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election, for the unexpired period of the term of office; or
- (c) leave the seat vacant until the next scheduled elections are held if the un-expired period of office is less than twelve months.

5. **Termination of Office of a Council Member**

- 5.1 A Council Member may resign from office by giving notice in writing to the Head of Corporate Governance.
- 5.2 If a Council Member fails to attend two (successive) meetings of the Council of Governors in any financial year, his tenure of office is to be immediately terminated by the Council of Governors unless the Council is satisfied that:
 - (a) the absences were due to reasonable cause; and
 - (b) he will be able to attend meetings of the Council of Governors within such a period as the Council of Governors consider reasonable.

- 5.3 The Council of Governors may by a resolution approved by a majority of Council Members present and entitled to vote at a properly constituted meeting of the Council of Governors terminate a Council Member's tenure of office if for a reasonable cause it considers:
- he has failed to undertake any training which the Council of Governors requires all Council Members to undertake;
 - he has committed a serious breach of the trust's Code of Conduct, or
 - he has acted in a manner detrimental to the interests of the trust.

6. Initial (first) Council Members' Term of Office

6.1 *The Public Constituency*

Notwithstanding the provisions of paragraph 13 of the constitution, for the initial Council Members elected to a Public Constituency of the trust, the following will apply:

- The Council Member for each of the District Council Areas within Oxfordshire (areas 1-5 in Annex 1) who receives the most votes in the initial election will retire at the expiry of three years from the date of their election. The other Council Member for each of these areas will retire at the expiry of two years from the date of their election;
- The two Council Members for the Buckinghamshire, Berkshire, Northamptonshire, Warwickshire, Gloucestershire & Wiltshire area (area 6 in Annex 1) who receive the most votes in the initial election will retire at the expiry of three years from the date of their election and the remaining two members from this area will retire at the expiry of two years from the date of their election. **or**

b) The Council member for each of the Buckinghamshire, Berkshire, Gloucestershire & Wiltshire and Northamptonshire and Warwickshire areas (areas 6 and 7 in Annex 1) who receives the most votes in the initial election will retire at the expiry of three years from the date of their election and the remaining members from these areas will retire at the expiry of two years from the date of their election.
- The Council Member for the Rest of England and Wales (area 7 in Annex 1) will serve three years from the date of election.

6.2 *The Staff Constituency*

Notwithstanding the provisions of paragraph 13 of the constitution, of the initial staff members to be elected to the Staff Constituency and appropriate class within the Staff Constituency of the trust on its establishment, the following will apply:

- The elected Non-Clinical Staff Class member will retire at the expiry of three years from the date of their election;
- The two Council Members representing the Clinical Staff Class who receive most votes at the initial election will retire at the expiry of three years from the date of their election; and
- The remaining three Council Members representing the Clinical Staff Class will retire at the expiry of two years from the date of their election. **or**

a) The Non-Clinical staff class member who receives the most votes at the initial election will retire at the expiry of three years from the date of their election;
- The two Council Members representing the Clinical Staff Class who receive most votes at the initial election will retire at the expiry of three years from the date of their election; and

- (c) The remaining elected Non-Clinical staff class member will retire at the expiry of two years from the date of their election; and
- (d) The remaining two elected Clinical staff class members will retire at the expiry of two years from the date of their election.

7. ***Induction Programme***

- 7.1 A comprehensive induction programme will be available for all Council Members following their election or appointment.

Annex 6: Standing Orders for the Practice and Procedure of the Council of Governors

1. Introduction

- 1.1. These Standing Orders for the practice and procedures of the Council of Governors are the standing orders referred to in paragraph 17 of the constitution.

2. Interpretation

- 2.1. The definition and interpretation of words and expressions contained in these Standing Orders are as set out in the constitution.

3. The Council of Governors

- 3.1. Certain powers and decisions may only be exercised by the Council of Governors in formal session.

4. Meetings of the Council of Governors

4.1. *Admission of the Public and the Press*

- 4.1.1. The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors subject to Standing Orders 4.1.2 and 4.1.3 below.
- 4.1.2. The Council of Governors may resolve to exclude members of the public and representative of the press from any meeting or part of a meeting on the grounds that:
 - 4.1.2.1. publicity would be prejudicial to the public interest having regard to the confidential nature of the business to be transacted; or
 - 4.1.2.2. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.1.3. In the interests of public order the meeting may be adjourned for a period to be specified in such resolution to enable the Council of Governors to complete business without the presence of the public.
- 4.1.4. Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.

4.2. *Calling Meetings*

- 4.2.1. Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be not less than four meetings in any year.
- 4.2.2. The chairman, or in his absence the deputy chairman, may call a meeting of the Council of Governors at any time. If the chairman refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of the Council Members and specifying the business to be transacted at the meeting, has been presented to them, or if, without so refusing, the chairman does not call a meeting within seven clear days after such requisition has been presented to them at the trust's Headquarters, such one third or more of the Council Members may forthwith call a meeting for the purpose of conducting that business.

4.3. Notice of Meetings

- 4.3.1. Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the chairman or by an officer of the trust authorised by the chairman, shall be delivered to, or sent by post to the usual place of residence of every Council Member, so as to be available to them at least five clear days before the meeting save in the case of emergencies. Subject to Standing Order 4.3.4 below, lack of service of the notice on any Council Member shall not affect the validity of a meeting.
- 4.3.2. Notwithstanding the above requirement for notice, the chairman may waive notice in writing on written receipt of agreement of at least 50% of Council Members.
- 4.3.3. In the case of a meeting called by Council Members in default of the chairman, the notice shall be signed by those Council Members and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.4. Subject to Standing Order 4.3.2 above, failure to serve notice on more than three quarters of Council Members will invalidate any meeting. A notice will be presumed to have been served 48 hours after it was posted.
- 4.3.5. Save in an emergency, an agenda shall be sent to each Council Member so as to arrive no later than five days in advance of each meeting and supporting papers, whenever possible, shall accompany the agenda. Minutes of the previous meeting will be circulated with the papers for approval and this will be a specific agenda item.
- 4.3.6. Papers for meetings to be held in public – agenda, minutes and supporting papers – shall be made available via the trust's website no later than four days in advance of the meeting.
- 4.3.7. Before any meeting of the Council of Governors which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the trust's office at least three clear days before the meeting.

4.4. Setting the Agenda

- 4.4.1. The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.4.2. A Council Member desiring a matter to be included on an agenda shall make his request in writing to the chairman at least ten clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the chairman.

4.5. Petition

- 4.5.1. Where a petition has been received by the trust the chairman shall include the petition as an item for the agenda of the next meeting.

4.6. Chair of Meeting

- 4.6.1. The chairman is appointed in accordance with the constitution (Annex 8, Appendix 4: Appointment of Chairman and non-executive Directors).
- 4.6.2. At any Council of Governors meeting, the chairman, if present, shall preside.
- 4.6.3. If the chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the deputy chairman or senior independent director shall preside.

4.6.4. If the deputy chairman or senior independent director is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, such Council Member as the Council Members that are present shall appoint, shall preside.

4.7. *Motions*

- 4.7.1. A Council Member wishing to move or amend a motion shall send written notice of it to the chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the chairman. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 4.3.3 above.
- 4.7.2. A motion or amendment once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the chairman.
- 4.7.3. Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months, shall bear the signature of the Council Members who gave it and also the signature of four other Council Members. When the Council of Governors has disposed of any such motion it shall not be competent for any Council Member, other than the chairman, to propose a motion to the same effect within six months; however the chairman may do so if he considers it appropriate.
- 4.7.4. The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.7.5. When a motion is under discussion or immediately prior to discussion it shall be open to a Council Member to move:
- 4.7.5.1. An amendment to the motion;
 - 4.7.5.2. The adjournment of the discussion or the meeting;
 - 4.7.5.3. That the meeting proceeds to the next item of business;
 - 4.7.5.4. The appointment of an ad hoc committee to deal with a specific item of business;
 - 4.7.5.5. That the motion be now put.
- 4.7.6. No amendment to the motion shall be admitted if, in the opinion of the chairman of the meeting, the amendment negates the substance of the motion.
- 4.7.7. Subject to the agreement of the chairman and this Standing Order 4.7, a Council Member 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. At the chairman's discretion, the emergency motion shall be declared to the Council of Governors at the commencement of the business of the meeting as an additional item included on the agenda. The chairman's decision to include the item shall be final.

4.8. *Chairman's Ruling*

- 4.8.1. Statements of Council Members made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

4.9. *Voting*

- 4.9.1. Save as otherwise provided in the constitution and/or the 2006 Act, if the chairman so determines or if a Council Member requests, a question at a meeting shall be determined

by a majority of the votes of the Council Members present and voting on the question and, in the case of any equality of votes, the chairman shall have a casting vote.

- 4.9.2. All questions put to the vote shall, at the discretion of the chairman, be decided by a show of hands. A paper ballot may be used if a majority of the Council Members so request.
- 4.9.3. In no circumstances may an absent Council Member vote by proxy. Absence is defined as being absent at the time of the vote.

4.10. Minutes

- 4.10.1. The Minutes of the proceedings of a meeting shall be drawn up by the Head of Corporate Governance and submitted for agreement at the next ensuing meeting where the chairman presiding at it will sign them.
- 4.10.2. No discussion shall take place upon the minutes except upon their accuracy or where the chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.11. Attendance

- 4.11.1. Council Members unable to attend a meeting shall notify the Head of Corporate Governance in advance of the Meeting so that their apologies may be submitted.

4.12. Suspension of Standing Orders

- 4.12.1. Except where this would contravene any statutory provision or provision of this constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council Members are present, there is a majority of Council Members who are members of the Public Constituency of the trust, and that a majority of those present vote in favour of suspension.
- 4.12.2. A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 4.12.3. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the chairman and Council Members.
- 4.12.4. No formal business may be transacted while Standing Orders are suspended.

4.13. Variation and Amendment of Standing Orders

These Standing Orders shall be amended in accordance with paragraph 44 of the constitution.

4.14. Record of Attendance

The names of the chairman and Council Members present at the meeting shall be recorded in the minutes.

4.15. Quorum

- 4.15.1. No business shall be transacted at a meeting unless at least one third of the total number of Council Members entitled to vote are present at the meeting with the majority of Council Members from the Public Constituency.
- 4.15.2. 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 five clear days and upon reconvening, those present shall constitute a quorum.

4.15.3. If a Council Member 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 then he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next item of business.

5. Committees

- 5.1. The Council of Governors may appoint committees of the Council of Governors from time to time to assist it in the proper performance of its functions under the constitution and the 2006 Act (the 'Regulatory Framework'), consisting wholly or partly of members of the Council of Governors.
- 5.2. A committee appointed under Standing Order 5.1 may, subject to such directions as may be given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.
- 5.3. 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 with the term "chairman" to be read as a reference to the chair of the committee and the term "Member" to be read as a reference to a member of the committee as the context permits.
- 5.4. 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.
- 5.5. Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committees unless expressly authorised by the Council of Governors.
- 5.6. Where the Council of Governors determines that persons who are neither Council Members, nor members of the Board of Directors nor 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.

6. Declarations of Interests and Register of Interests

6.1. Declaration of Interests

- 6.1.1. The Regulatory Framework requires each Council Member to disclose to the other Council Members:
 - 6.1.1.1. any actual or potential interest, direct or indirect, which is relevant and material to the business of the trust, as described in Standing Order 6.2.1; and
 - 6.1.1.2. any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the trust, as described in Standing Orders 6.2.2 and 6.2.3; and
 - 6.1.1.3. any actual or potential family interest, direct or indirect, of which the Council Member is aware, as described in Standing Order 6.2.5.
- 6.1.2. Such a declaration shall be made either at the time of the Council Member's election or appointment or as soon thereafter as the interest arises, but within five clear days of becoming aware of the existence of that interest, and in such manner as the Head of Corporate Governance may prescribe from time to time.

- 6.1.3. In addition, if a Council Member 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 shall not vote on any question with respect to the matter.
- 6.1.4. Subject to Standing Order 6.2.4, if a Council Member has declared a pecuniary interest, he or she shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Council of Governors meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 6.1.5. This Standing Order 6 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 Council Member).
- 6.1.6. The interests of Council Members in companies likely or possibly seeking to do business with the NHS should be published in the trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.2. Nature of Interests

- 6.2.1. Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:
 - 6.2.1.1. Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 6.2.1.2. ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
 - 6.2.1.3. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
 - 6.2.1.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 6.2.1.5. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
 - 6.2.1.6. any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the trust, including but not limited to, lenders or banks.
- 6.2.2. A Council Member shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter if:
 - 6.2.2.1. the individual, or a nominee of the individual's, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 6.2.2.2. he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 6.2.3. A Council Member shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 6.2.3.1. of his membership of a company or other body, if he or she has no beneficial interest in any securities of that company or other body; or
 - 6.2.3.2. of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to

influence a Council Member in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or

6.2.3.3. of any travelling or other expenses or allowances payable to a Council Member in accordance with the constitution.

6.2.4. An interest in the securities of a company or other body shall for the purposes of paragraph 6.2.3.2 above be regarded as remote or insignificant if:

6.2.4.1. the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is less, and

6.2.4.2. if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class.

6.2.5. A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a Council Member which if it were the interest of that Council Member would be a personal interest or a pecuniary interest of the individual's.

6.2.6. If Council Members have any doubt about the relevance or materiality of an interest, this should be discussed with the chairman. 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.

6.3. *Exclusion from proceedings of the Council of Governors*

6.3.1. Subject to Standing Order 6.2.3 above, if a Council Member discloses an interest pursuant to Standing Order 6 to the other Council Members, he shall not take part in the consideration or discussion of the matter or vote on any question with respect to it. At the time the interest is declared, it should be recorded in the meeting minutes.

6.3.2. Any change in interests should be officially declared at the next relevant meeting following the change occurring.

6.3.3. If a conflict of interest is established during the course of a meeting, the Council Member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.4. *Register of Interests*

6.4.1. The Head of Corporate Governance shall keep a Register of Interests of Council Members, which shall contain the names of each Member, whether he or she has declared any interest, and if so, the interest declared.

6.4.2. These details will be kept up to date by means of an annual review of the Register of Interest in which any changes to interests declared during the preceding twelve months will be incorporated.

6.4.3. The Register of Interests will be available to the public in accordance with the constitution and the Chief Executive will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population.

6.4.4. In establishing, maintaining and publicising the Register of Interests, the trust shall comply with all guidance issued from time to time by Monitor.

7. Standards of Business Conduct

Each Council Member shall comply with the trust's Code of Conduct and any guidance and directions issued by Monitor, in particular the NHS Foundation Trust Code of Governance.

8. Appointments and Recommendations

- 8.1. A Council Member 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 Members from giving written testimonial of a candidate's ability, experience or character for submission to the trust in relation to any appointment.
- 8.2. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.3. 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 Council Members or the holder of any office within the trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 8.4. The chairman and every Council Member shall disclose to the Chief Executive or his or her delegated officer any relationship between themselves and a candidate of whose candidature that Council Member 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.
- 8.5. Upon appointment, each Council Member should disclose to the Council of Governors whether they are related to any other Council Member or holder of any office in the trust.
- 8.6. Where a relationship to another Council Member is disclosed, Standing Order 6 shall apply.

9. Confidentiality

- 9.1. All Council Members shall abide by the trust's policies on confidentiality and code of conduct.
- 9.2. A member of the Council of Governors or an attendee on a committee of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission or until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 9.3. A Council Member other attendee at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

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

- 10.1. The Council of Governors will cooperate with the Board of Directors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to matters set out in the constitution.
- 10.2. In the event of a dispute, arrangements are set out in Annex 8, Appendix 2: Dispute resolution procedures.

11. Miscellaneous

- 11.1. The Head of Corporate Governance shall provide a copy of these Standing Orders to each Council Member and endeavour to ensure that each Member understands his or her responsibilities within these Standing Orders.
- 11.2. If for any reason these Standing Orders are not complied with, full details of the non-compliance, any justification for non-compliance and the circumstances of it, shall be reported to the next formal meeting of the Council of Governors for action or ratification.

- 11.3. All Council Members have a duty to disclose any non-compliance with these Standing Orders to the chairman as soon as possible.

12. Council of Governors: Declarations

- 12.1. A member of a Public Constituency standing for election as Council Member must make a declaration for the purposes of Section 60(2) of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a member and that he is not prevented from being a Council Member by virtue of paragraph 8 of Schedule 7 of the 2006 Act. It is an offence to knowingly or recklessly make a statement or declaration in respect of Section 60(2) of the 2006 Act which is false in material particular.

- 12.2. The specified form of declaration shall be set out on the nomination form referred to in Annex 4: Model Election Rules and shall state:

"I, the above named candidate, consent to my nomination and agree to stand for election to the Council of Governors in the constituency indicated in Section 1 of this form. I also declare that I am a member in that constituency.

I, the above named candidate, hereby declare that I am not:

- a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- a person who within the preceding 5 years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on him.

I confirm that to the best of my knowledge, the information provided on (or in connection with) this form is accurate."

- 12.3. A Member elected to the Council of Governors by the Public Constituency or Staff Constituency may not for the purposes of Section 60(3) of the 2006 Act vote at a meeting of the Council of Governors unless within the period since his election, he has made a declaration in the form specified below stating which constituency he is a member of, and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act:

"I declare that I am a member of the Public Constituency or Staff Constituency and am eligible to vote at a meeting of the Council of Governors, and that I am not debarred from voting by any of the provisions in paragraph 8 of Schedule 7 to the 2006 Act."

13. Nominated Lead Council Member

- 13.1. The Council of Governors shall nominate one of its Council Members as the nominated lead Council Member ('Nominated Lead Council Member').
- 13.2. The Nominated Lead Council Member shall provide his contact details to Monitor and continue to update Monitor and the Council of Governors with their contact details as and when they change.
- 13.3. The role of the Nominated Lead Council Member is to facilitate direct communication between Monitor and the Council of Governors in the limited circumstances where it may not be appropriate to communicate through the normal channels.
- 13.4. The Nominated Lead Council Member shall take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action.
14. In the event that an individual Council Member wishes to make contact with Monitor, this contact will be through the Nominated Lead Council Member.

Annex 7: Standing Orders for the Practice and Procedure of the Board of Directors

1. Interpretation

The definition and interpretation of words and expressions contained in these Standing Orders are as set out in the constitution.

2. Composition of Board of Directors

2.1 Subject to Standing Orders, the composition of the Board of Directors will be in accordance with the constitution and will include:

- a) the non-executive chairman of the trust;
- b) up to seven voting non-executive directors; and
- c) up to seven voting executive directors, including:
 - the Chief Executive (Accounting Officer);
 - the Finance Director;
 - a registered medical practitioner or a registered dentist;
 - a registered nurse or a registered midwife.

2.2 The Board of Directors shall at all times be constituted so that the number of non-executive directors (excluding the chairman) equals or exceeds the number of executive directors.

3. Role of Members of the Board of Directors

The Board of Directors will function as a corporate decision-making body. Executive and non-executive directors will be full and equal members of the Board. The general duty of the Board of Directors and of each director individually is to act with a view to promoting the success of the trust so as to maximise the benefits for the members of the trust as a whole and for the public.

4. Meetings

4.1 *Calling of Meetings*

4.1.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and in such places as the Board of Directors may determine. Board meetings shall be held in public but the whole or any part of a meeting may be held in private if the Board of Directors so resolves for special reasons.

4.1.2 The chairman may call a meeting of the Board of Directors at any time.

4.1.3 One third or more directors of the Board of Directors may requisition a meeting in writing. If the chairman refuses, or fails, to call a meeting within seven clear days of a requisition being presented, the directors signing the requisition may forthwith call a meeting.

4.2 *Notice of Meetings*

4.2.1 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 chairman or by an officer of the trust authorised by the chairman to sign on his/her behalf, shall be delivered to, or sent by post to the usual place of residence

of every director, so as to be available to them at least five clear days before the meeting save in the case of emergencies.

- 4.2.2 In the case of a meeting called by directors in default of the chairman calling the meeting, the notice shall be signed by those directors.
- 4.2.3 Failure to serve notice on more than three directors will invalidate any meeting. A notice will be deemed to have been served 48 hours after it was posted.
- 4.2.4 Before any meeting of the Board of Directors which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the trust's office at least three clear days before the meeting.
- 4.2.5 Before holding a meeting, the Board of Directors will send a copy of the agenda of the meeting to the Council of Governors and as soon as practicable after holding a meeting, it will send the Council of Governors a copy of the minutes of the meeting.

5. **Agendas and Supporting Papers**

- 5.1 Save in an emergency, an agenda shall be sent to each director so as to arrive with each director no later than 5 days in advance of each meeting and supporting papers, whenever possible, shall accompany the agenda. Minutes of the previous meeting will be circulated with the papers for approval and this will be a specific agenda item.
- 5.2 Agendas and supporting papers for meetings held in public shall be posted to the trust's website prior to the meeting and printed copies made available on request.

6. **Petition**

Where a petition has been received by the trust the chairman shall include the petition as an item for the agenda of the next meeting.

7. **Motions**

- 7.1 A member of the Board of Directors wishing to move or amend a motion shall send written notice of it to the chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the chairman. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 7.5 below.
- 7.2 A motion or amendment once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the chairman.
- 7.3 Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months, shall bear the signature of the director who gave it and also the signature of four other members of the Board of Directors. When the Board of Directors has disposed of any such motion it shall not be competent for any member of the Board of Directors, other than the chairman, to propose a motion to the same effect within six months; however the chairman may do so if he/she considers it appropriate.
- 7.4 The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto.
- 7.5 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
 - (i) An amendment to the motion;
 - (ii) The adjournment of the discussion or the meeting;

- (iii) That the meeting proceed to the next business;
- (iv) The appointment of an *ad hoc* committee to deal with a specific item of business;
- (v) That the motion be now put.

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

7.6 **Emergency Motion**

Subject to the agreement of the chairman and this Standing Order 7, a director 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. At the chairman's discretion, the emergency motion shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included on the agenda. The chairman's decision to include the item shall be final.

8. **Voting**

- 8.1 All questions put to the vote shall, at the discretion of the chairman, be decided by a show of hands. A paper ballot may be used if a majority of the Board of Directors present so request.
- 8.2 Save as provided in the constitution, every question put to a vote at a meeting shall be determined by a majority of the votes of the directors present and voting on the question.
- 8.3 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 8.4 In the case of an equal vote, the chairman or such other person presiding at the meeting shall have a second, and casting vote.

9. **Attendance**

Directors who are unable to attend a meeting shall notify the Secretary in advance of the meeting in question so that their apologies may be submitted.

10. **Quorum**

- 10.1 The quorum of a meeting will be at least half of the whole number of members of the Board of Directors (including at least one non-executive director and one executive director).
- 10.2 If a member of the Board of Directors has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next item of business.
- 10.3 The requirement in Standing Order 10.1 above for a least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting.

11. **Chairman**

The chairman is appointed in accordance with the constitution and shall be responsible for the operation of the Board of Directors (and Council of Governors) and chair all Board of Directors and Council of Governors meetings when present.

12. **Appointment of the Deputy Chairman and Senior Independent Director**

12.1 Deputy Chairman: The Council of Governors at a general meeting may appoint one of the non-executive directors to be deputy chairman. Where the chairman dies or ceases to hold office, or where he is unable to perform his duties as chairman owing to illness, conflict of interest or any other cause, the deputy chairman shall act as chairman and perform the chairman's duties until a new chairman is appointed or the existing chairman resumes his duties, as the case may be.

12.2 Senior Independent Director: The Board of Directors (in consultation with the Council of Governors) may appoint a non-executive director as the Senior Independent Director who shall perform the role set out in the NHS Foundation Trust Code of Governance.

13. Executive Directors

Executive directors are appointed in accordance with the constitution and shall exercise their authority within the terms of these Standing Orders, the Standing Financial Instructions and the Scheme of Reservation and Delegation.

14. Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the trust and is the Accounting Officer for the trust.

15. Finance Director

The Finance Director shall be responsible for the provision of financial advice to the trust and for the supervision of financial control and accounting systems.

16. Non-Executive Directors

The non-executive directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the trust.

17. Chairman's ruling

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

18. Arrangements for the Exercise of Trust Functions by Delegation

18.1 *Scheme of Reservation and Delegation*

The Chief Executive shall prepare a Scheme of Reservation and Delegation identifying matters that shall be reserved and those to be delegated which shall be considered and approved by the Board of Directors.

18.2 *Delegation of Functions to Committees, Officers or other bodies.*

Subject to the Regulatory Framework and such guidance, if any, as may be given by Monitor, the Board of Directors may make arrangements on behalf of the trust for the exercise of any of its functions by a formally constituted committee, sub-committee, or an officer of the trust; in each case subject to such restrictions and conditions as the Board of Directors think fit.

18.3 ***Delegation to Committees***

The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, which it has formally constituted in accordance with the constitution. 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 in respect of its sub-committees.

18.4 ***Scheme of Delegation***

The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board of Directors. The Chief Executive may periodically propose any amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors.

18.5 ***Delegation to Officers***

Those functions of the trust which have not been retained as reserved by the Board of Directors or delegated to other committee or sub-committee shall be exercised on behalf of the trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the trust.

18.6 ***Discharge of the Direct Accountability***

Nothing in the Scheme of Reservation and Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director to provide information and advise the Board of Directors in accordance with statutory requirements or any requirements of Monitor.

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

If for any reason these Standing Orders are not complied with, full details of the non-compliance, and the circumstance around it, 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 officers have a duty to disclose any non-compliance with these Standing Orders to the trust Secretary as soon as possible.

19. **Appointment of Committees and Sub-Committees**

19.1 ***Appointment of Committees and Sub-Committees***

Subject to the paragraph 3.3 of the constitution and such directions and guidance as may be issued by the Board of Directors from time to time, the Board of Directors may appoint committees of the Board of Directors consisting of one or more members of the Board.

A committee appointed under this Standing Order may, subject to such directions and guidance as may be issued by the Board of Directors, appoint sub-committees.

19.2 ***Applicability of Standing Orders and Standing Financial Instructions to Committees and Sub-Committees***

The Standing Orders and Standing Financial Instructions of the trust, as far as applicable, shall as appropriate apply to meetings and any committees and sub-committees established by the Board of Directors. In which case the term "Chair" is to be read as a reference to the chairman of the committee or sub-committee as the context permits, and the term "member

of the Board" is to be read as a reference to a member of the committee or sub-committee also as the context permits.

19.3 ***Delegation of powers by Committees to Sub-Committees***

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

19.4 ***Terms of Reference of Committee***

Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions as the Board of Directors shall decide. Such terms of reference shall be in accordance with the Regulatory Framework and guidance issued by Monitor.

19.5 ***Approval of Appointments to Committees***

Subject to Standing Order 19.6, the Board of Directors shall approve the appointments to each of the committees which it has formally constituted.

19.6 ***Appointments for Statutory Functions***

Where the Board is required by the constitution, by any applicable statute or regulations or by any guidance issued by Monitor to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Board of Directors, such appointments shall be made in accordance with the constitution or such applicable statute or regulations or such guidance issued by Monitor.

19.7 ***Committees established by the Board***

The committees established by the Board are:

19.7.1 Audit Committee;

19.7.2 Remuneration and Appointments Committee;

19.7.3 Finance and Performance Committee;

19.7.4 Quality Committee; and

19.7.5 where so required, a committee to act as a joint special committee with a committee of the Council of Governors for the purpose of resolving disputes between the Council of Governors and the Board of Directors in accordance with the Dispute Resolution Procedure at Annex 8, Appendix 2: Dispute resolution procedures.

19.8 ***Other Committees and Sub-Committees***

The Board may also establish such other committees and sub-committees as required to discharge the Board's responsibilities.

20. ***Declarations of Interest and Register of Interests***

The constitution, the 2006 Act and the Code of Conduct and Accountability require directors to declare interests which are relevant and material to the NHS board of which they are a director. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment.

The principles set out in paragraph 33 of the constitution and for Members of the Council of Governors at paragraph 6 in Annex 6: Standing Orders for the Practice and Procedure of the Council of Governors apply equally to members of the Board of Directors.

21. Custody of Seal

The common seal of the trust shall be kept by the Chief Executive or a nominated manager by him in a secure place.

22. Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive and also not from the originating department, and shall be attested by them.

23. Register of Sealing

The Chief Executive shall keep a register in which he, or another manager of the trust authorised by him, shall enter a record of the sealing of every document.

24. Signature of Documents

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

In land transactions, the signing of certain supporting documents will be delegated to managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

25. Suspension of Standing Orders

Except where this would contravene any statutory provision, or guidance issued by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided the meeting is quorate. Any such suspension shall be recorded in the minutes of the meeting.

26. Confidentiality

All members of the Board of Directors shall abide by the trust's policies on confidentiality and code of conduct and will be required to declare compliance with the code upon appointment and annually thereafter.

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

The Board 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 matters set out in the constitution. In the event of a dispute arrangements are set out in Annex 8, Appendix 2: Dispute resolution procedures.

28. Standing Orders to be given to Members of the Board and Officers

It is the duty of the Chief Executive to ensure that existing members of the Board of Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive.

Annex 8: Further provisions

Annex 8, Appendix 1: Membership

1. Representative Membership

- 1.1. The trust shall at all times strive to have a membership that is, taken as a whole, representative of those eligible for membership. To this end, the trust shall have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least every three years.
- 1.2. The Council of Governors shall present to each annual members' meeting:
 - 1.2.1. A report on steps taken to achieve membership that is representative of those eligible for membership.
 - 1.2.2. Progress on the membership strategy.
 - 1.2.3. Any changes to the membership strategy.

2. Disqualification from membership of the trust

- 2.1. A person may not become or remain a member of the trust if they have demonstrated aggressive or violent behaviours at any hospital and following such behaviours have been asked to leave, have been removed or excluded from any hospital in accordance with the relevant trust policy for withholding treatment from violent/aggressive patients.
- 2.2. A person may not become or remain a member of the trust if they have been confirmed as a 'vexatious complainant' in accordance with the relevant trust policy for handling complaints.
- 2.3. Any person involved in an incident of violence against the trust's hospitals, facilities, employees or registered volunteers.
- 2.4. A person may not become or remain a member of the trust if they have been removed as a member from another NHS Foundation Trust.
- 2.5. A person may not become or remain a member of the trust if they are deemed to have acted in a manner contrary to the interests of the trust.
- 2.6. Where the trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member the Secretary shall give the member 14 days' written notice to show cause why his/her name should not be removed from the register of members. On receipt of any such information supplied by the member, the Secretary may, if s/he considers it appropriate, remove the member from the register of members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine²⁸.
- 2.7. All members of the trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a member.

3. Expulsion from membership of the trust

- 3.1. A member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:

²⁸ Annex 2 of Appendix 8 suggests unresolved disputes between the Trust and a member get referred to an independent arbitrator. Trust should make it clear whether it is the Council of Governors or the independent arbitrator process that deals with disputes regarding membership.

- 3.1.1. Any member may complain to the Head of Corporate Governance that another member has acted in a way detrimental to the interests of the trust, or is otherwise disqualified as set out in paragraph 2 above.
- 3.1.2. If a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each member's point of view is heard and may either:
 - 3.1.2.1. dismiss the complaint and take no further action; or
 - 3.1.2.2. arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

4. Termination of Membership

- 4.1. A member shall cease to be a member on:
 - 4.1.1. death;
 - 4.1.2. resignation by notice in writing to the Secretary; or
 - 4.1.3. ceasing to fulfil the requirements of paragraphs 6, 7 or 8 of the constitution, as the case may be.

5. Voting at Council of Governors elections

- 5.1. A member may not for the purpose of Section 60(1) of the 2006 Act, vote at an election for a public Council of Governors Constituency unless within the period specified he has made a declaration in the specified form stating the particulars of his qualification to vote as a member of a constituency, or class, or area within a constituency for which an election is being held.
- 5.2. No member may make a statement of declaration which is false in material particular; this is an offence in respect of Section 60(1) of the 2006 Act for public members. Trust procedures apply for staff members.

Annex 8, Appendix 2: Dispute resolution procedures

1. Dispute: General

1.1. In the event of an unresolved dispute which arises out of this constitution between the trust and:

- a. a member; or
- b. any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
- c. any person bringing a claim under this constitution; or
- d. an office-holder of the trust;

the issue is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties.

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

2. Dispute: Council of Governors and the Board of Directors

2.1. In the event of dispute between the Council of Governors and the Board of Directors:

2.1.1. In the first instance the chairman on the advice of the Head of Corporate Governance, and such other advice as the chairman may see fit to obtain, shall seek to resolve the dispute;

2.1.2. If the chairman is unable to resolve the dispute he/she shall refer the dispute to the Head of Corporate Governance who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, 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;

2.1.3. If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the chairman may refer the dispute to the Board of Directors who shall make the final decision.

Annex 8, Appendix 3: Legal issues

1. Checking Process: Council Members and Non-Executive Directors

Members of the Council of Governors and non-executive directors will be subject to a checking process at the time of election or appointment. This will involve Criminal Records Bureau (CRB) checks and a medical undertaken by the trust's Occupational Health Department. nb.: executive directors undergo these checks as part of the Trust recruitment process.

2. Review of Trust Documents

As part of its commitment to good governance, the trust will undertake regular reviews of all its documentation. Any change/amendment will be considered by the appropriate Board/Committee within the trust and made in accordance with paragraph 44 of the constitution.

3. Interpretation

In the event of a question arising about any ambiguity, meaning or internal inconsistency within this constitution or about any matter not provided for by the constitution the Board of Directors shall have jurisdiction to determine that question and its decision shall be binding.

Annex 8, Appendix 4: Appointment of Chairman and non-executive Directors

1. Initial (first) Appointments

Provisions in paragraph 26 of the constitution shall be followed.

2. Arrangements for Appointments after Initial (first) Appointment

- 2.1. Subject to the provisions of the constitution, the process for appointing new non-executive directors and the chairman will be as follows:
- 2.2. Subject to paragraphs 2.3 and 2.4 below, the chairman and other non-executive directors are to be appointed by the Council of Governors following a process of open competition. Subject to paragraph 3 below, the current chairman or a non-executive director may stand for reappointment.
- 2.3. On the first renewal of the appointment of a non-executive director, the Council of Governors will appoint a Nominations Committee to determine whether the non-executive director may be reappointed without a process of open competition. If the Nominations Committee does not consider the reappointment appropriate, then a suitable replacement will be identified in accordance with paragraphs 2.5 and 2.6 below.
- 2.4. The University of Oxford shall be entitled to nominate a representative to serve as a non-executive director of the trust for a period to be agreed by the Nominations Committee, who will be appointed in accordance with the appointment process mandated by the 2006 Act.
- 2.5. Six months before the end of the term of office of the chairman or a non-executive director (as the case may be), the Council of Governors will appoint a Nominations Committee to seek a suitable replacement. The relevant Nominations Committee will be constituted in accordance with paragraph 2.8 or 2.9 below.
- 2.6. The Nominations Committee shall seek candidates for office by way of open advertisement and other means. It shall assess and select for interview such candidates as are considered appropriate and in doing so the Nominations Committee shall be at liberty to seek advice and assistance from persons other than members of the Committee, including (without limitation) the Council of Governors and the Board of Directors.
- 2.7. The Nominations Committee will make recommendations to the Council of Governors, including recommendations about pay. External professional advisers will be consulted on comparable remuneration levels for the chairman and other non-executive directors at least once every three years and when they intend to make a material change to the remuneration of a non-executive director. The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Nominations Committee and of the Board of Directors as to the suitability of the available candidates and the remuneration and allowances and other terms and conditions of office.
- 2.8. The *Nominations Committee for the Chairman* will consist of three Public Council Members, one Staff Council Member and one appointed Council Member.
 - 2.8.1. If the number of Council Members prepared to serve on the Nominations Committee is greater than the number of places available, the committee members will be selected by secret ballot of Council Members.
 - 2.8.2. The committee shall be chaired by the deputy chairman.
 - 2.8.3. Each of the members of the committee shall have one vote on making a recommendation to the Council of Governors as to potential candidates for appointment. The committee's Chair will have a casting vote.

- 2.9. The *Nominations Committee for Non-Executive Directors* will consist of the Chairman, two elected public Council Members, one elected staff Council Member, and one appointed Council Member.
- 2.9.1. The Chief Executive may attend at the Committee's request in an advisory capacity only.
- 2.9.2. If the number of Council Members wishing to serve on the Nominations Committee for non-executive directors is greater than the number of places available, the committee's members will be selected by secret ballot of Council Members.
- 2.9.3. The chairman will chair the committee.
- 2.9.4. Each of the five members of the committee will have one vote on a recommendation to the Council of Governors as to potential candidates for appointment.
- 2.10. The Nominations Committees will be supported by appropriate advice from the trust's Director of Workforce.
- 2.11. All appointments will be conducted and made in accordance with the Human Resources policies of the trust.
- 2.12. The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Nominations Committee.

3. Term of Office of Chairman and Non-Executive Directors

- 3.1. Subject to paragraph 1 above, Non-Executive Directors, including the chairman, shall be appointed by the Council of Governors for specified terms at intervals of no more than three years.
- 3.2. No more than two terms of office may be served.