

*CONSTITUTION*

*OF*

*SHERWOOD FOREST HOSPITALS NHS*  
*FOUNDATION TRUST*

*(A Public Benefit Corporation)*

*Approved from \_\_\_\_-\_\_\_\_-2005*

*Revised version approved \_\_\_\_-\_\_\_\_-2013*

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# SHERWOOD FOREST HOSPITALS NHS FOUNDATION TRUST (A PUBLIC BENEFIT CORPORATION)

## CONSTITUTION

This Constitution represents the constitution of Sherwood Forest Hospitals NHS Foundation Trust as adopted in accordance with the 2006 Act (as defined below) as amended by the 2012 Act (as defined below). This Constitution sets out the powers and functions of the Trust. In exercising its powers and carrying out its functions the Trust shall aim to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act.

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

Headings are for ease of reference only and are not to affect interpretation. All annexes referred to in this Constitution form part of it.

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

References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex to this Constitution it shall be a reference to a paragraph in that annex unless the contrary is expressly stated or the context otherwise so requires.

### 1 Definitions

#### 1.1 In this Constitution:

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

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

**Accounting Officer** - means the Chief Executive who discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

**Annual Accounts** - means those accounts prepared by the Trust (through the Accounting Officer) pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

**Annual Members' Meeting** - means the annual meeting of the Members as provided for in paragraph 6.8;

**Annual Report** - means the annual report of the Trust prepared by the Trust as referred to at paragraph 15.1;

**Appointed Governor** - means a CCG Governor, a Local Authority Governor, or an Other Partnership Governor;

**Audit Committee** - means the committee of the Board of Directors as established pursuant to paragraph 8.8.4;

**Auditor** - means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 7.15.3.1;

**Board of Directors** - means the board of directors of the Trust as constituted in accordance with this Constitution;

**CCG** - means NHS Mansfield and Ashfield Clinical Commissioning Group;

**CCG Governor** - means the governor appointed by the CCG pursuant to paragraph 7.5.1;

**Code of Conduct for Directors** - means the Trust's code of conduct for Directors (as amended from time to time);

**Code of Conduct for Governors** - means the Trust's code of conduct for Governors (as amended from time to time);

**CoG's Nominations Committee** - means the committee appointed by the Council of Governors pursuant to paragraph 8.5.1.3;

**Council of Governors** - means the council of governors of the Trust as constituted in accordance with this Constitution;

**Chairman** - means the chairman of the Trust appointed in accordance with paragraph 7.15.3.1;

**Chief Executive** - means the chief executive of the Trust appointed in accordance with paragraph 8.5.2;

**Constituency** - means either the Public Constituency or the Staff Constituency and "Constituencies" shall be construed accordingly;

**Constitution** - means this Constitution together with its annexes;

**Co-optee** - means an individual attending the Council of Governors in accordance with paragraph 7.8 or 7.9;

**Designated Trust Sub-contractors** - means Central Nottinghamshire Hospitals PLC (CNH) and such other sub-contractors of the Trust as may be designated as such from time to time by the Board of Directors;

**Director** - means an Executive or Non-Executive Director;

**Elected Governor** - means a Staff Governor or a Public Governor;

**Election Scheme** - means the election rules set out at Annex 3 of the Constitution as may be amended from time to time;

**Engagement Policy** - means the engagement policy in relation to the interaction of the Board of Directors and Council of Governors as published by the Council of Governors from time to time;

**Executive Director** - means an executive director of the Trust being the Chief Executive, Finance Director or such other executive director as is appointed under paragraph 8.5;

**Finance Director** - means the finance director of the Trust appointed in accordance with paragraph 8.5;

**Financial Year** - each successive period of twelve months beginning with 1st April in any year;

**Governor** - means a member of the Council of Governors (and, for the avoidance of doubt, a Co-optee is not a member of the Council of Governors);

**Health Overview and Scrutiny Committee** - means a local authority overview and scrutiny committee established pursuant to Section 21 of the Local Government Act 2000;

**Health Service Body** - shall have the meaning ascribed to it in section 65(1) of the 2006 Act;

**Healthwatch** - means a Healthwatch England committee as defined in section 181 of the Health and Social Care Act 2009 or a Local Healthwatch organisation as defined in section 222 of the Local Government and Public Involvement in Health Act 2007;

**Hospital** means: King's Mill Hospital; Newark Hospital; Mansfield Community Hospital and all associated hospitals, establishments and facilities at which the Trust provides and/or manages the provision of goods and/or services, including accommodation and "Hospitals" shall be construed accordingly;

**Independent Regulator** - means the independent regulator of NHS foundation trusts known as "Monitor" as provided by section 61 of the 2012 Act;

**Lead Governor** - means the Governor appointed by the Council of Governors as the Trust's lead governor pursuant to paragraph 7.1.3;

**Local Authority** - means any of: Ashfield District Council; Mansfield District Council; Newark & Sherwood District Council; and Nottinghamshire County Council and "Local Authorities" shall be construed accordingly;

**Local Authority Governor** - means a member of the Council of Governors appointed pursuant to paragraph 7.6 by a Local Authority;

**Member** - means a member of the Trust and the term "Membership" shall be construed accordingly;

**Nolan Principles** - means the seven principles of conduct of holders of public office enunciated by the Nolan Committee in its Report on Standards in Public Office;

**Non-Executive Director** - means the Chairman or such other non-executive director of the Trust appointed in accordance with paragraph 8.5;

**Other Partnership Governor** - means a member of the Council of Governors appointed by an Other Partnership Organisation pursuant to paragraph 7.7;

**Other Partnership Organisation** - means West Nottinghamshire College; Nottingham University; and/or such other organisation as may be appointed as such under this Constitution;

**Policies** - means the Trust's published policies on whistleblowing, confidentiality, equal opportunities and such other reasonable Trust policies as are notified to the Directors, Governors and Co-optees in writing from time to time;

**Public Constituency** - means the constituency made up of the Public Constituency Classes;

**Public Constituency Class** - means the classes making up the Public Constituency as set out in Annex 1 and "Public Constituency Classes" shall be construed accordingly;

**Public Governor** - means a member of the Council of Governors elected by the members of a Public Constituency Class.

**Registered Dentist** - means a registered dentist within the meaning of the Dentists Act 1984;

**Registered Medical Practitioner** - means a medical practitioner who is fully registered within the meaning of the Medical Act 1983 who holds a license to practice under that Act.

**Registered Midwife** - means a person who is registered to practice as a midwife by the Nursing and Midwifery Council;

**Registered Nurse** - means a person who is registered to practice as a nurse by the Nursing and Midwifery Council;

**Senior Independent Director** means an independent Non-Executive Director appointed by the Board of Directors (in consultation with the Council of Governors) and having the role envisaged by the Independent Regulator's NHS Foundation Trust Code of Governance;

**Staff Class** - one of the classes for the Staff Constituency as set out in Annex 2 and "Staff Classes" shall be construed accordingly;

**Staff Constituency** - means the constituency of the Trust comprising the Staff Classes as referred to Annex 2;

**Staff Governor** - means a member of the Council of Governors elected by the members of a Staff Class;

**Sub-contractor Personnel** - means the employees of any of the Trust's Designated Sub-contractors who, in the course of their employment, exercise functions on behalf of the Trust;

**Trust** - means the Sherwood Forest Hospitals NHS Foundation Trust;

**Trust Secretary** - means the secretary of the Trust or any other person or body corporate appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;

**Vice Chairman** - means the Non-Executive Director appointed as the vice chairman of the Trust by the Council of Governors in general meeting;

**Volunteer** - means an individual who carries out functions on behalf of the Trust on a voluntary basis as set out in paragraph 6.3;

**Volunteer Class** - means the volunteer class as set out in paragraph 6.3 which form part of the Staff Constituency;

**Volunteer Governor** - means a governor elected by the Volunteer Class.

## 2 Name

2.1 The name of the foundation trust is "Sherwood Forest Hospitals NHS Foundation Trust".

## 3 Principal Purpose

3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the health service in England.

3.2 The Trust does not fulfill 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.

## 4 Other Purposes

4.1 In addition to the Trust's principal purpose as set out in paragraph 3, the Trust may:

4.1.1 provide goods and services for any purposes related to:

4.1.1.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

4.1.1.2 the promotion and protection of public health;

4.1.2 carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others; and

4.1.3 carry on activities other than those mentioned above for the purpose of making additional income available in order to better carry on the Trust's principal purpose.

## 5 Powers

5.1 The Trust has all the powers of an NHS foundation trust as set out in the 2006 Act.

5.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.



5.3 Any of the powers of the Trust may be delegated to a committee of Directors or to an Executive Director in accordance with this Constitution and the Standing Orders of the Board of Directors.

## **6 Members and constituencies**

### **6.1 Constituencies**

6.1.1 The Trust has two Constituencies, namely:

6.1.1.1 the Public Constituency; and

6.1.1.2 the Staff Constituency.

### **6.2 Public Constituency**

6.2.1 Subject to paragraph 6.5 an individual is eligible to become a member of the Public Constituency and therefore a Public Constituency Class if he:

6.2.1.1 lives in the area specified for that Public Constituency Class in the corresponding entry in column 2 of Annex 1;

6.2.1.2 is not a member of another Public Constituency Class;

6.2.1.3 is not eligible to become a member of the Staff Constituency; and

6.2.1.4 is at least 16 years old at the time of his application to be a Member.

6.2.2 Those individuals who are eligible to be members of the Public Constituency Classes are referred to collectively as the “Public Constituency”.

6.2.3 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.

6.2.4 On receipt of an application for Membership and subject to being satisfied that the applicant is eligible the Trust Secretary shall cause the applicant’s name to be entered in the Trust’s register of Members.

6.2.5 The minimum number of Members of each Public Constituency Class is set out in column 3 of Annex 1.

### **6.3 Staff Constituency**

6.3.1 Subject to paragraphs 6.3.2 and 6.5 individuals are eligible to become members of the Staff Constituency if they are at least 16 years old and:

6.3.1.1 they are employed by the Trust under a contract of employment (other than as a Non-Executive Director);

6.3.1.2 they are Sub-contractor Personnel; or

6.3.1.3 they are a Volunteer.

For the avoidance doubt members of the Staff Constituency cannot be members of the Public Constituency.

6.3.2 An individual is only eligible to become a member of the Staff Constituency under paragraph 6.3.1 above if they satisfy the minimum duration requirements set out in 3(3) of Schedule 7 to the 2006 Act, that is to say:

6.3.2.1 In the case of individuals qualifying under paragraph 6.3.1.1 above, they:

- (a) are employed by the Trust under a contract of employment which has no fixed term;
- (b) are employed by the Trust under a contract of employment which has fixed term of at least 12 months; or
- (c) have been continuously employed by the Trust under a contract of employment for at least 12 months;

6.3.2.2 In the case of those qualifying under paragraph 6.3.1.2 or 6.3.1.3 above, they have been:

- (a) employed by a Designated Trust Sub-contractor; or
- (b) engaged as a Volunteer

and have exercised functions on behalf of the Trust, continuously for a period of at least 12 months.

6.3.2.3 For the purposes of paragraphs 6.3.2.1 and 6.3.2.2 Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether the individual has been continuously employed by the Trust or has continually exercised functions on behalf of the Trust.

6.3.3 An individual who is:

6.3.3.1 eligible to become a member of the Staff Constituency who qualifies under paragraph 6.3.1.1 or who qualifies under paragraph 6.3.1.3; and

6.3.3.2 is invited by the Trust to become a member of the Staff Constituency and appropriate Staff Class within the Staff Constituency

shall become a Member of the Trust as a member of the Staff Constituency and relevant Staff Class without an application for Membership being made unless he informs the Trust that he does not wish to become a Member.

6.3.4 An individual who is eligible to become a member of the Staff Constituency by virtue of being Sub-contractor Personnel will

become a Member of the Trust if they apply to the Trust Secretary to become a Member and are entered in the register of Members.

6.3.5 On receipt of an application for Membership for those qualifying for membership of the Trust under paragraph 6.3.4, or in the case of those qualifying by default under paragraph 6.3.3, and subject to being satisfied that the applicant is eligible, the Trust Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

6.3.6 Those individuals who are eligible for Membership by reason of the provisions set out in this paragraph 6.3 are referred to collectively as the "Staff Constituency".

#### 6.4 Staff Constituency: Classes

6.4.1 The Staff Constituency shall be divided into 6 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.

6.4.2 Individuals who are eligible to be a member of the Staff Constituency may not become or continue as a Member of more than one Staff Class, and individuals who are eligible to join more than one Staff Class shall be allocated to the Staff Class for which they are primarily employed or engaged.

6.4.3 Any individual who is both a Volunteer and employed by the Trust shall be assigned to the Staff Class for which they are primarily employed or engaged.

6.4.4 The minimum number of Members of each Staff Constituency Class is set out in column 3 of Annex 1.

#### 6.5 Disqualification for Membership

6.5.1 An individual may not be or continue as a Member of the Trust if, in respect of:

6.5.1.1 a Public Member he does not meet the relevant eligibility criteria under paragraph 6.2; or

6.5.1.2 a Staff Member he does not meet the relevant eligibility criteria under paragraph 6.3.

6.5.2 It is the responsibility of each Member to ensure his eligibility for membership. If the Trust is on notice that a Member may no longer be eligible to be a Member, the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Member concerned to comment on its findings (within 14 days), and following receipt of any comments or expiry of that 14 day period (whichever occurs first) the Trust Secretary shall decide whether such Member should be disqualified.

## 6.6 Termination of Membership

6.6.1 A Member shall cease to be a Member if he

6.6.1.1 resigns by notice in writing to the Trust Secretary; or

6.6.1.2 ceases to fulfill the eligibility requirements of paragraphs 6.2 or 6.3 and/or is disqualified under paragraph 6.5.

## 6.7 Voting at Governor Elections

6.7.1 A Member may not vote in an election for an Elected Governor unless within the specified time period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the Constituency (and where relevant the appropriate class within that Constituency) for which the election is being held. The specified time period and form of declaration are specified in the Election Scheme.

6.7.2 It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to at paragraph 6.7.1 which is false in a material particular.

6.7.3 An individual who is a member of another foundation trust as well as the Trust may vote in elections for this Trust provided he is able to comply with the provisions of this paragraph 6.7 (Voting at Governor Elections)

## 6.8 Annual Members' Meeting

6.8.1 The Trust shall every year hold an Annual Members' Meeting which shall be open to members of the public.

6.8.2 The following documents shall be presented at the Annual Members' Meeting by at least one of the Directors:

6.8.2.1 the Annual Accounts;

6.8.2.2 any report of the Auditor on the Annual Accounts; and

6.8.2.3 the Annual Report.

6.8.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of being presented with the documents in sub-paragraph 6.8.2 with the Annual Members' Meeting.

6.8.4 In accordance with paragraph 20.3 where an amendment has been made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as a part of the Trust), Members shall be given an opportunity to vote at the Annual Members' Meeting on whether they approve the amendment which shall be presented to that meeting by at least one Governor.

6.8.5 Where an amendment has been presented to the Annual Member's Meeting in accordance with paragraph 6.8.4, and it is not approved

by more than half of the Members voting such amendment shall cease to have effect and the Trust shall take such steps as are necessary as a result.

## **7 Council of Governors**

### **7.1 Composition**

7.1.1 The Trust shall have a Council of Governors which shall consist of Elected Governors and Appointed Governors (as set out in paragraph 7.1.2).

7.1.2 The composition of the Council of Governors shall be:

7.1.2.1 fifteen (15) Public Governors representing the Public Constituency Classes as set out in Annex 1;

7.1.2.2 seven (7) Staff Governors representing the Staff Classes as set out in Annex 2;

7.1.2.3 one (1) CCG Governor;

7.1.2.4 four (4) Local Authority Governors; and

7.1.2.5 two (2) Other Partnership Governors.

7.1.3 The Council of Governors shall nominate a Governor to be the Trust's Lead Governor.

### **7.2 Governor Elections**

7.2.1 Elected Governors shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency. The number of Governors to be elected by each Constituency or, where appropriate, by each class of each Constituency, is as set out in Annexes 1 and 2.

7.2.2 Elections for Elected Governors shall be conducted in accordance with the Election Scheme. A subsequent variation to the Election Scheme to reflect a change to the Independent Regulator's model election rules shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 20.1.

7.2.3 The Election Scheme provides for arrangements to be made to assist those persons requiring assistance to vote.

7.2.4 Members:

7.2.4.1 standing for; and/or

7.2.4.2 voting in

Governor elections must comply with the terms of the Election Scheme.

7.2.5 Where an election is contested, the election shall be by secret ballot.

### 7.3 Public Governors

7.3.1 Each Public Constituency Class shall elect the number of Governors set against it in column 4 of Annex 1.

7.3.2 Members of each Public Constituency Class may elect any of their number who is eligible to be a Public Governor.

7.3.3 An individual may not stand for election to the Council of Governors as a Public Governor unless:

7.3.3.1 within the period specified in paragraph 12 of the Election Scheme (Annex 3), he has made a declaration in the form specified in that part of that annex of his qualification to vote as a Member of the Public Constituency Class for which the election is being held; and

7.3.3.2 he is not prevented from being a member of the Council of Governors by paragraph 7.12 (Suspension and disqualification).

7.3.4 It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to in paragraph 7.3.3.1 which is false in a material particular.

### 7.4 Staff Governors

7.4.1 Members of each Staff Class may elect the number of Governors for that Staff Class as set out in Annex 2.

7.4.2 Members of the Staff Constituency may elect any individual who is eligible to be a Staff Governor in respect of the relevant Staff Constituency.

7.4.3 The Election Scheme, including the specified forms of and periods for declarations to be made by candidates standing for office and Members as a condition of voting and the process if the election is uncontested, is set out in Annex 3.

### 7.5 CCG Governors

7.5.1 The CCG may appoint 1 CCG Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) pursuant to a process agreed between the CCG and the Trust.

### 7.6 Local Authority Governors

7.6.1 Each of the Local Authorities may appoint one Local Authority Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) by notice in writing signed by:

- 7.6.1.1 the leader of the relevant council;
  - 7.6.1.2 or a member of the relevant council's executive
- and delivered to the Trust Secretary.

## 7.7 Other Partnership Governors

7.7.1 Each Other Partnership Organisation may appoint one Other Partnership Governor (such person being eligible to be, and not disqualified from being, a Governor under this Constitution) as set out below:

7.7.1.1 West Nottinghamshire College may appoint its Other Partnership Governor by notice in writing signed by the principal of West Nottinghamshire College and delivered to the Trust Secretary.

7.7.1.2 Nottingham University may appoint its Other Partnership Governor by notice in writing signed by a pro - vice chancellor of Nottingham University and delivered to the Trust Secretary.

## 7.8 Transition arrangements

7.8.1 Where an Elected Governor ceases to be eligible to hold the office to which he was elected by virtue of paragraphs 6.2 or 6.3 that Elected Governor shall immediately notify the Trust Secretary of the circumstances giving rise to his ineligibility.

7.8.2 Where the Trust Secretary receives notice from an Elected Governor, pursuant to paragraph 7.8.1, that he believes he is no longer eligible to hold his office (or the Trust Secretary otherwise becomes aware that the Elected Governor is no longer eligible to hold his office) the Trust Secretary shall notify the Elected Governor that his position is suspended with immediate effect and shall ask the Governor if he:

7.8.2.1 wishes to stand down as a Governor; and

7.8.2.2 would like, subject to paragraph 7.9.3, to be considered for a Co-optee position on the Council of Governors.

7.8.3 Where the Elected Governor confirms in writing that he:

7.8.3.1 will stand down as a Governor, such resignation shall take effect immediately;

7.8.3.2 wants to be considered as a Co-optee; and

the provisions of paragraphs 7.8.4 - 7.8.6 shall apply.

7.8.4 Subject to the maximum number of Co-optees to the Council of Governors not being exceeded by the attendance of the former Elected Governor as a Co-optee, the Trust Secretary shall request the Chairman to table a motion at the next Council of Governors'

meeting for approval of the attendance of the former Elected Governor as a Co-optee.

7.8.5 Where the attendance of the former Elected Governor as a Co-optee:

7.8.5.1 would result in the number of serving Co-optees exceeding the maximum permitted pursuant to paragraph 7.9.3; or

7.8.5.2 the Council of Governors does not resolve to permit the Elected Governor to attend as a Co-optee

the Trust Secretary shall notify the former Elected Governor to that effect and confirm in writing that his tenure as an Elected Governor has terminated.

7.8.6 Where the Council of Governors resolve to permit a former Elected Governor to attend the Council of Governors as a Co-optee that former Elected Governor shall:

7.8.6.1 cease to hold office as a Governor and instead hold the position of Co-optee; and

7.8.6.2 hold the position of Co-optee for the remainder of his original term of office as an Elected Governor after which his attendance at the Council of Governors shall cease.

7.8.7 The provisions of paragraphs 7.9.1 - 7.9.4 shall not apply to Co-optees named under this paragraph 7.8.

## 7.9 Co-optees

7.9.1 Where any vacancy for an Elected Governor position remains unfilled notwithstanding compliance with the procedures described in paragraph 7.14.1 and 7.14.2, the Lead Governor shall put forward to the Council of Governors (in accordance with the process agreed by him and the Trust Secretary) a list of individuals who are Members of the Constituency (and where relevant the relevant class) who can be considered to be Co-optees.

7.9.2 Subject to paragraph 7.9.3, the Council of Governors may by way of resolution resolve to confirm an individual from the Lead Governor's list to act as a Co-optee.

7.9.3 The Council of Governors may have no more than 3 Co-optees attending the Council of Governors at any time.

7.9.4 Co-optees shall attend the Council of Governors in accordance with the provisions of paragraph 7.10.3.

7.9.5 For the avoidance of doubt, Co-optees are merely "in attendance" at any meetings of the Council of Governors, shall not count towards the quorum and shall have no voting rights, and shall act only in an advisory capacity to the Council of Governors.



## 7.10 Terms of Office

### 7.10.1 Elected Governors:

- 7.10.1.1 shall be elected for a period of 3 years;
- 7.10.1.2 are, subject to paragraphs 7.10.1.3 and 7.10.1.4 eligible for re-election at the end of the period referred to in paragraph 7.10.1.1;
- 7.10.1.3 may hold office for a maximum of 9 years but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be subject to annual re-election and, in any event, he shall not serve for a total term longer than 12 years; and
- 7.10.1.5 shall cease to hold office if they cease to be a member of the Constituency (or relevant class within a Constituency) by which they were elected or in any other situation specified in this Constitution.

### 7.10.2 Appointed Governors:

- 7.10.2.1 shall be appointed for a period of 3 years.
- 7.10.2.2 are, subject to paragraphs 7.10.2.3 and 7.10.2.4 eligible for reappointment at the end of the period referred to in paragraph 7.10.2.1;
- 7.10.2.3 may hold office for a maximum of 9 years but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be subject to annual re-appointment and, in any event, he shall not serve for a total term longer than 12 years; and
- 7.10.2.4 shall cease to hold office if their appointing organisation withdraws its appointment of them or in any other situation specified in this Constitution.

### 7.10.3 Co-optees

- 7.10.3.1 Co-optees shall, where they are appointed pursuant to paragraph 7.9 and subject to 7.11.3, attend the Council of Governors only until the date of the next election for the vacancy in respect of which they have been coopted, whereupon their attendance as a Co-optee shall automatically cease;
- 7.10.3.2 Co-optees may not (pursuant to paragraph 7.10.3.1 above) hold that position for longer than 3 years; and
- 7.10.3.3 Co-optees shall immediately cease to hold that position if removed by resolution of the Council of Governors.

7.10.4 Governors and Co-optees must comply with the Trust's:

7.10.4.1 Constitution;

7.10.4.2 Standing Orders for the Council of Governors;

7.10.4.3 Code of Conduct for Governors; and

7.10.4.4 Policies.

7.11 Termination of Tenure

7.11.1 A Governor may resign from office at any time during the term of his office by giving notice in writing to the Trust Secretary or the Chairman.

7.11.2 A Governor's tenure:

7.11.2.1 shall be terminated immediately if a Governor fails to attend two consecutive meetings of the Council of Governors, unless a majority of the other Governors are satisfied that:

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

7.11.2.2 shall be terminated immediately if the Council of Governors decide (by a majority of the other Governors) that a Governor has:

- (a) failed to comply with paragraph 7.10.4; (except where the Council of Governors decide that termination of tenure would not be appropriate in the circumstances);
- (b) conducted himself in an inappropriate manner which would adversely affect public confidence in the Trust or the Council of Governors; or
- (c) conducted himself in such a manner as is likely to bring the Trust into disrepute including, but without prejudice to the generality of the foregoing, a failure to declare a material or pecuniary interest which would or would be likely to result in a conflict of interest.

7.11.3 A Co-optee's tenure shall be terminated if he:

7.11.3.1 resigns by notice to the Chairman or Trust Secretary;

7.11.3.2 fails comply with paragraph 7.10.4 as above or abide by the values of the Nolan Principles;

7.11.3.3 is removed by a resolution of the Council of Governors;

7.11.3.4 is involved in any act of violence against staff or Members of the Trust;

7.11.3.5 is or has been identified by the Chief Executive as a vexatious complainant in respect of the Trust; or

7.11.3.6 ceases to be a Member of the relevant Constituency (and/or relevant class) from which he was appointed by the Council of Governors.

7.11.4 The Council of Governors may request that the CoG's Nominations Committee investigates any matter which would give rise to them exercising their powers in paragraphs 7.11.2 - 7.11.3 (inclusive) and to receive the representations of the relevant Governor and any representative appointed by him for that purpose except to the extent that the Code of Conduct for Governors provides a procedure for the same in which case such procedure must be followed.

7.11.5 Any engagement of the CoG's Nominations Committee pursuant to paragraph 7.11.4 shall make such report and recommendations to the Council of Governors as it deems fit and shall, as far as practicable, submit any report and recommendations to the Council of Governors within 4 months of commencing their investigation.

## 7.12 Suspension and disqualification from office

7.12.1 Where a Staff Governor (who is not Sub-contractor Personnel or a Volunteer) has been:

7.12.1.1 made the subject of a written warning or a period of suspension in excess of 28 days; or

7.12.1.2 absent from his post as an employee of the Trust for a continuous period of not less than four months and no reasonable cause (in the opinion of the Council of Governors acting by simple majority) has been given for absence

his term of office as Governor may be suspended by the Council of Governors) for such period of time as the Council of Governors deems fit and so as to enable, if necessary, an investigation to be carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors as to why he should still be eligible to continue as a Staff Governor and the Council of Governors shall decide whether to terminate the Governor's term of office and such determination of the Council of Governors shall be final.

7.12.2 Where a Staff Governor who is Sub-contractor Personnel or a Volunteer has been suspended from their employment or position as a Volunteer his term of office as Governor may be suspended by the Council of Governors for such period of time until such suspension

has been brought to an end and so as to enable, if necessary, an investigation to be carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors as to why he should still be eligible to continue as Staff Governor and the Council of Governors shall decide whether to terminate the Governor's term of office and such determination of the Council of Governors shall be final.

7.12.3 An individual is immediately disqualified from becoming or continuing to hold office as a Governor if he:

7.12.3.1 has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;

7.12.3.2 is a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

7.12.3.3 has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

7.12.3.4 has within the preceding five years been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

7.12.3.5 has within the preceding three years been dismissed (including, but not limited to, by reason of redundancy) by the Trust;

7.12.3.6 is under 16 years of age;

7.12.3.7 is an individual whose tenure of office as the Chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interest of the health service, for non attendance at meetings or for non-disclosure of a pecuniary interest;

7.12.3.8 is an Executive or Non-Executive Director, or a governor, executive director, non-executive director, chairman, chief executive officer of another NHS foundation trust;

7.12.3.9 has had his name removed from any list prepared pursuant to paragraph 14 of the National Health Service (Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently has his name included in such a list;

7.12.3.10 is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;

- 7.12.3.11 is registered as a sex offender pursuant to Part 1 of the Sex Offenders Act 1997;
  - 7.12.3.12 has been identified and given notice in writing by the Chief Executive to the effect that he is a vexatious complainant in respect of the Trust;
  - 7.12.3.13 is a member of Healthwatch; or
  - 7.12.3.14 has contravened any other provision of this Constitution.
- 7.12.4 An individual is disqualified from becoming or continuing to hold office as a Public Governor if:
- 7.12.4.1 he ceases to be a Member of the Public Constituency (or Public Constituency Class) for which he was elected; or
  - 7.12.4.2 he is eligible to be a Member of the Staff Constituency.
- 7.12.5 An individual is disqualified from becoming or continuing to hold office as a Staff Governor if he:
- 7.12.5.1 ceases to be a Member of the Staff Constituency (or Staff Class) for which he was elected; or
  - 7.12.5.2 is employed by the Trust on a temporary contract which contract is or was identified on the face of it as a temporary contract.
- 7.12.6 An individual is disqualified from becoming or continuing to hold office as an Appointed Governor if the relevant appointing organisation withdraws its appointment of him.
- 7.12.7 If an Elected or Appointed Governor ceases to be eligible to hold such office because grounds for disqualification exist pursuant to paragraph 7.12 (other than under paragraph 7.12.1 and paragraph 7.11.2), he shall immediately notify the Trust Secretary in writing of the circumstances.
- 7.12.8 If the Trust is on notice that a Governor may no longer be eligible to be a Governor, the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Governor concerned to comment on its findings (within 14 days) and following receipt of any comments or expiry of that 14 day period (whichever occurs first) the Council of Governors shall decide whether such Governor's term of office should be terminated.

## 7.13 Consequences of termination of tenure

### 7.13.1 Where a Governor:

- 7.14.1.1 has given notice of resignation in accordance with paragraph 7.11.1;
- 7.14.1.2 has had his term of office terminated pursuant to the terms of this Constitution in any manner whatsoever; or

7.14.1.1 is otherwise disqualified from holding office pursuant to the Constitution or the 2006 Act,

that Governor shall thereupon cease to be a Governor and his name shall be forthwith removed from the Register of Governors.

7.13.2 A Governor who resigns or whose tenure of office is terminated shall not be eligible to stand for re-election for a period of three years from the date of his resignation or termination of office.

#### 7.14 Vacancies

7.14.1 Where a Governor's tenure of office ceases for one or more of the reasons set out in paragraph 7.11 or 7.12, in the case of:

7.14.1.1 Public Governors and Staff Governors, such vacancy shall, subject to provisions of paragraphs 7.14.2 and 7.14.3, be filled by elections held in accordance with the Election Scheme set out in Annex 3; and

7.14.1.2 the CCG Governor, the Local Authority Governor and Other Partnership Governors shall be replaced in accordance with the processes set out in paragraphs 7.5 - 7.7.

7.14.2 Where a vacancy arises amongst the Elected Governors for any reason (including, for the avoidance of doubt, an increase in the number of Elected Governors effected by an amendment to the Constitution in accordance with paragraph 20.1 below) other than the expiry of the term of office, the Council of Governors shall decide either:

7.14.2.1 to call an election within three months to fill the vacancy, unless an election is due within nine months in which case the seat shall stand vacant until the following scheduled election;

7.14.2.2 to invite the next highest polling candidate in the relevant constituency at the most recent election who is willing to take office, to fill the vacancy, provided that the candidate achieved at least 5% of the vote in the last held election for the relevant constituency and, where appropriate, class (the "Reserved Governor"). If the vacancy is filled in this way, the Reserved Governor shall be eligible for re-election for a further two full three year terms; or

7.14.2.3 to leave the seat vacant until the next scheduled elections are held

except that if the aggregate number of Public Governors does not exceed half the total membership of the Council of Governors an election will be held in accordance with the Election Scheme as soon as reasonable practicable.

7.14.3 If no candidate is available or is willing to fill a vacancy arising pursuant to paragraphs 7.14.1 and 7.14.2 above, the provisions of paragraph 7.9 Co-optee(s) shall apply.

## 7.15 Roles and Responsibilities of Governors

7.15.1 The general duties of the Council of Governors are:

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

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

7.15.2 The Trust must take steps to secure that its Governors are equipped with the skills and knowledge they require to carry out their role as a Governor.

7.15.3 The roles and responsibilities of the Governors (in addition to any roles and responsibilities set out elsewhere in this Constitution) are:

7.15.3.1 at a General Meeting:

(a) to appoint or remove the Chairman and the other Non-Executive Directors as further set out in the Standing Orders for the Council of Governors. The removal of the Chairman or a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;

(b) to approve the appointment (by the Non-Executive Directors) of the Chief Executive as further set out in the Standing Orders for the Council of Governors;

(c) to decide the remuneration and allowances, and other terms and conditions of office of the Non-Executive Directors;

(d) to appoint or remove the Trust's Auditor; and

(e) to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report.

7.15.3.2 to give the views of the Council of Governors to the Board of Directors for the purposes of the preparation by the Board of Directors of the document containing the information to be given to the Independent Regulator as to the Trust's forward planning in respect of each Financial Year;

7.15.3.3 to consider the Annual Accounts, any report of the Auditor on them and the Annual Report;

7.15.3.4 to respond as appropriate when consulted by the Directors in accordance with this Constitution; and

7.15.3.5 to represent the interests of Members and the Other Partnership Organisations in the governance of the Trust, regularly feeding back information about the Trust, its vision and its performance to the Constituency or Other Partnership Organisation they represent; and

7.15.3.6 confirming the appointment of the Co-optees.

## 7.16 Expenses

7.16.1 Governors are entitled to receive re-imbursment for travelling and other expenses incurred and evidenced by receipts in accordance with the Trust's expenses policy at such rates as the Trust decides from time to time.

7.16.2 The Trust shall publish the rates referred to in paragraph 7.16.1 in the Annual Report.

## 7.17 Remuneration

7.17.1 Governors are not entitled to receive remuneration for their role.

## 7.18 Meetings

7.18.1 Meetings of the Council of Governors shall be conducted in accordance with the provisions of the Standing Orders for the Council of Governors as set out in Annex 5.

7.18.2 Meetings of the Council of Governors shall be chaired by the Chairman or in his absence the Vice Chairman. If the Vice Chairman is also unavailable the meeting shall be chaired by such person as is chosen in accordance with the Standing Orders for the Council of Governors.

7.18.3 The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each year where the Council of Governors shall receive and consider the annual accounts, any report of the auditor on them and the annual report.

7.18.4 The Council of Governors may require one or more of the Directors to attend a meeting 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). Unless otherwise agreed, at least five working days' notice of the meeting must be provided.

7.18.5 Meetings of the Council of Governors shall be open to members of the public, but members of the public may be excluded from a meeting for special reasons.

7.18.6 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

## 7.19 Committees and Sub-Committees



7.19.1 The Council of Governors may appoint committees and sub-committees in accordance with the provisions of the Standing Orders for the Council of Governors.

7.19.2 The Council of Governors cannot delegate its powers to any committee or sub-committee.

#### 7.20 Conflicts of Interests of Governors.

7.20.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it.

7.20.2 The Standing Orders of the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed and Governors shall comply with the provisions of the Standing Orders for the Council of Governors.

#### 7.21 Referral to the Panel

7.21.1 A Governor may refer a question as to whether the Trust has failed or is failing;

7.21.1.1 to act in accordance with the Constitution; or

7.21.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

7.21.2 In this paragraph 21, the Panel means a panel of persons appointed by Independent Regulator to which a Governor of the Trust may refer a question as set out in 7.21.1.

#### 7.22 Engagement Policy

7.22.1 The Governors and Directors shall observe the terms of the Engagement Policy in relation to their engagement with each other on matters concerning the Trust.

### **8 Board of Directors**

8.1 The Trust shall have a Board of Directors which shall consist of Executive and Non-Executive Directors.

8.2 The Board of Directors shall comprise the following:

8.2.1 the Chairman (a Non-Executive Director);

8.2.2 at least 5 other Non-Executive Directors;

- 8.2.3 the Chief Executive (an Executive Director);
  - 8.2.4 the Finance Director (an Executive Director); and
  - 8.2.5 at least 2 other Executive Directors but subject to the provisions of paragraph 8.4.
- 8.3 One of the Executive Directors is to be:
- 8.3.1 a Registered Medical Practitioner or Registered Dentist; and
  - 8.3.2 a Registered Nurse or Registered Midwife.
- 8.4 At all times the composition of the Board of Directors shall be such that the number of Executive Directors is less than the number of Non-Executive Directors.
- 8.5 Appointment and removal of Non-Executive Directors and Executive Directors
- 8.5.1 Appointment and removal of Non-Executive Directors
    - 8.5.1.1 The Council of Governors, at a general meeting of the Council of Governors, shall appoint and remove the Chairman and other Non-Executive Directors;
    - 8.5.1.2 The Council of Governors, at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as Vice Chairman;
    - 8.5.1.3 The Council of Governors shall establish the CoG's Nominations Committee (comprising the Chairman, three Public Governors, two Staff Governors and one Appointed Governor) to consider candidates for appointment as Non-Executive Directors against an agreed job specification.
    - 8.5.1.4 The CoG's Nominations Committee shall shortlist from those candidates meeting the specified criteria, those candidates whom it wishes to interview and shall conduct interviews with the said candidates and thereafter make its recommendation to the Council of Governors as to who should be appointed as a Non-executive Director.
    - 8.5.1.5 The Council of Governors shall consider the recommendation of the CoG's Nominations Committee and make a decision as to the appointment of the Non-Executive Directors in general meeting.
    - 8.5.1.6 An individual shall not be appointed as a Non-Executive Director unless he is a member of the Public Constituency.
    - 8.5.1.7 The removal of a Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

## 8.5.2 Appointment and removal of Executive Directors

8.5.2.1 It is for the Chairman and the other Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.

8.5.2.2 It is for a committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors to appoint or remove the Executive Directors (other than the Chief Executive).

## 8.6 Terms of Office

8.6.1 Subject to paragraph 8.6.3, the Chairman and the other Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office (including as to remunerations and allowances, which shall be published in the Annual Report) decided by the Council of Governors in general meeting.

8.6.2 The Executive Directors shall hold offices for a period in accordance with the terms and conditions of office (including as to remunerations and allowances) decided by the relevant committee of Non-Executive Directors.

### 8.6.3 Non-Executive Directors:

8.6.3.1 shall be appointed for a period of up to 3 years;

8.6.3.2 are, subject to paragraphs 8.6.3.3 and 8.6.3.4 eligible for re-election at the end of the period referred to in paragraph 8.6.3.1;

8.6.3.3 shall not, except in exceptional circumstances, hold office for a period in excess of 6 years; and

8.6.3.4 where appointed for more than 6 years shall, at the discretion of the Council of Governors, be so appointed either on the basis of:

(a) annual re-appointment; or

(b) a competitive process

up to a maximum 9 years.

### 8.6.4 The Directors shall comply with the Trust's:

8.6.4.1 Constitution;

8.6.4.2 Standing Orders for the Board of Directors;

8.6.4.3 Code of Conduct for Directors; and

8.6.4.4 Policies.

## 8.7 Disqualification

8.7.1 An individual may not become or continue as a Director of the Trust if:

8.7.1.1 he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;

8.7.1.2 he is a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

8.7.1.3 he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

8.7.1.4 he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

8.7.1.5 he is a person whose tenure of office as a chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

8.7.1.6 has had his name removed from any list prepared pursuant to paragraph 14 of the National Health Service (Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had his name included in such a list;

8.7.1.7 he has within the preceding three years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;

8.7.1.8 he is an executive or non-executive director or governor of another NHS Foundation Trust, or an executive director, non-executive director, chairman, chief executive officer of another Health Service Body;

8.7.1.9 Independent Regulator has exercised its powers under the 2006 Act to:

- (a) remove that individual as a director of the Trust or any other NHS foundation trust within its jurisdiction;
- (b) suspend him from office; or
- (c) disqualify him from holding office as a director of the Trust or of any other NHS foundation trust

for a specified period;

8.7.1.10 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;

8.7.1.11 he is registered as a sex offender pursuant to Part I of the Sex Offenders Act 1997;

8.7.1.12 he has been identified as a vexatious complainant in respect of the Trust and has been notified to that effect by notice in writing given by the Chief Executive; or

8.7.1.13 he has been unable to dedicate adequate time to the role and responsibilities of a Director of the Trust.

8.7.2 An individual may not be a Non-Executive Director if he ceases to be a member of the Public Constituency.

8.7.3 The Board of Directors may in their discretion appoint a Committee of the Board of Directors to enquire into any such matter as may be raised in connection with paragraph 8.7.1 and/or 8.7.2 above in accordance with terms of reference as determined by the Board of Directors and to make recommendations to the Board of Directors in respect thereof.

## 8.8 Duties, Roles and Responsibilities

8.8.1 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 maximize the benefits for the Members of Trust as a whole and for the public.

8.8.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each Financial Year to be given to the Independent Regulator.

8.8.3 The Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the Auditor on them and the Annual Report.

8.8.4 The Board of Directors shall appoint an audit committee of Non-Executive Directors to monitor, review and carry out such other functions in relation to audit as are appropriate.

8.8.5 The functions of the Trust under paragraph 14 are delegated to the Chief Executive as accounting officer.

## 9 Meetings of Directors

9.1 Meetings of the Board of Directors shall be conducted in accordance with the provisions of the Standing Orders for the Board of Directors which are set out in Annex 4.

- 9.2 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.
- 9.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.
- 9.4 As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the Board of Directors meeting to the Council of Governors.

## 10 Conflicts of Interest of Directors

- 10.1 The duties that a Director has by virtue of being a Director include in particular:
  - 10.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
  - 10.1.2 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.
- 10.2 The duty referred to in sub-paragraph 10.1.1 is not infringed if:
  - 10.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 10.2.2 the matter has been authorised in accordance with the Constitution.
- 10.3 The duty referred to in sub-paragraph 10.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 10.4 In sub-paragraph 10.1.2, “third party” means a person other than:
  - 10.4.1 the Trust; or
  - 10.4.2 a person acting on its behalf.
- 10.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 10.6 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 10.7 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.
- 10.8 A Director need not declare an interest:
  - 10.8.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

10.8.2 if, or to the extent that, the Directors are already aware of it;

10.8.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:

10.8.3.1 by a meeting of the Board of Directors, or

10.8.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

10.9 Directors shall comply with the provisions of the Standing Orders for the Board of Directors in relation to the declaration and management of conflicts of interests.

## **11 Registers**

11.1 The Trust is to have:

11.1.1 a register of Members showing, in respect of each Member, the Constituency and where there are classes within it, the class to which he belongs;

11.1.2 a register of members of the Council of Governors;

11.1.3 a register of interests of the members of the Council of Governors;

11.1.4 a register of Directors;

11.1.5 a register of interests of the Directors;

11.2 The Trust Secretary shall admit to the:

11.2.1 Register of Members the name, Constituency and class of Constituency of a Member upon receipt of a signed declaration from the Member confirming their eligibility as a Member;

11.2.2 Register of Governors the name and Constituency (and where relevant class within the Constituency) of those Members who have been elected or appointed as a Governor of the Trust.

11.3 The Trust Secretary shall remove from the:

11.3.1 Register of Members any Member:

11.3.1.1 who is not, or who is no longer, eligible to be a Member;

11.3.1.2 indicates in writing that they no longer wish to be a Member; or

11.3.1.3 has died, upon receipt of a notice to that effect from the Member's next of kin or personal representative;

11.3.2 Register of Governors those Governors:

11.3.2.1 who have not been re-elected;

11.3.2.2 who have had their appointment withdrawn;

11.3.2.3 whose tenure of office as Governors has been terminated;  
or

11.3.2.4 who are otherwise disqualified from office.

11.4 The Trust Secretary shall maintain the respective Registers of Interests of the Directors and Governors and undertake a review of the same at least once in every year by notice to that effect to all Directors and Governors.

## 12 Public Documents

12.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

12.1.1 a copy of the current Constitution;

12.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them;

12.1.3 a copy of the latest Annual Report;

12.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

12.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trust to be dissolved) of the 2006 Act;

12.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;

12.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

12.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

12.2.5 a copy of any statement provided under Section 65F (administrators draft report) of 2006 Act;

12.2.6 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 (Regulator's decision), 65KB (Secretary of State's response to Regulator'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;

12.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006;



- 12.2.8 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 12.2.9 a copy of any final report published under section 65I (administrators final report) of the 2006 Act;
  - 12.2.10 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;
  - 12.2.11 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 12.3 Any person who requests it shall be provided with a copy or extract from any of the above documents.
- 12.4 The registers mentioned in paragraph 11.1 above are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the 2006 Act, and so far as those registers are required to be available:
- 12.4.1 they are to be available free of charge at all reasonable times; and
  - 12.4.2 a person who requests shall be provided with a copy of or extract from them.
- 12.5 The Trust shall not make any part of its register available for inspection by members of the public which show details of any Member of the Trust if the Member so requests.
- 12.6 If the person requesting a copy or extract of a register or a document referred to in this paragraph 12 above is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

### **13 Auditor**

- 13.1 The Trust is to have an Auditor and is to provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under Chapter 5 of Part 2 to the 2006 Act.
- 13.2 An individual may only be appointed Auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 13.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 7.15.
- 13.4 An officer of the Audit Commission (as defined in the 2006 Act) may be appointed as Auditor with the agreement of the Commission. If such an appointment by the Council of Governors is made the Audit Commission shall charge fees for the services of the officer so appointed.
- 13.5 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

## 14 Accounts

- 14.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 14.2 The Independent Regulator may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 14.3 The accounts are to be audited by the Trust's Auditor.
- 14.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 14.4.1 the accounts;
  - 14.4.2 the records relating to them; and
  - 14.4.3 any report of the Auditor on them.
- 14.5 If trustees are appointed under section 51 of the 2006 Act, the Comptroller and the Auditor General may also examine:
  - 14.5.1 the accounts kept by the Trustees;
  - 14.5.2 any records relating to them; and
  - 14.5.3 any report of an auditor on them.
- 14.6 The Trust shall prepare in respect of each Financial Year, Annual Accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.
- 14.7 The function of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.
- 14.8 In preparing its Annual Accounts, the Trust is to comply with any directions given by the Independent Regulator with the approval of the Secretary of State as to:
  - 14.8.1 the period or periods in respect of which the Trust shall prepare accounts; and
  - 14.8.2 the audit requirements of any such accounts.
- 14.9 the Trust must:
  - 14.9.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and
  - 14.9.2 once it has done so, send copies of those documents to the Independent Regulator within such a period as the Independent Regulator may direct.
- 14.10 The Trust must send to the Independent Regulator within such period as the Independent Regulator may direct:

14.10.1 a copy of any accounts prepared by the Trust by virtue of paragraph 25(1A)(a) of the 2006 Act; and

14.10.2 a copy of any report of an auditor on them prepared by virtue of 25(1A)(b)

## **15 Annual Reports, Forward Plans and Non-NHS Work**

15.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.

15.2 The Annual Report shall contain:

15.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency is representative of those eligible for such membership;

15.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 7.19.4;

15.2.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 8.5.2 and such other procedures as the Trust has on pay;

15.2.4 the remuneration of the Directors and the expenses of the Governors and the Directors; and

15.2.5 any other information the Independent Regulator requires.

15.3 The Trust is to comply with any decision the Independent Regulator makes as to:

15.3.1 the form of the Annual Reports;

15.3.2 when the Annual Reports are to be sent to it;

15.3.3 the periods to which the Annual Reports are to relate.

15.4 The Trust shall give information as to its forward planning in respect of each Financial Year to the Independent Regulator. This information is to be prepared by the Directors, who must have regard to the views of the Council of Governors (paragraph 7.15.3.2 above).

15.5 Each forward plan must include information about -

15.5.1 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

15.5.2 the income it expects to receive from doing so.

15.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 15.5.1 the Council of Governors must:

15.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

15.6.2 notify the Directors of the Trust of its determination.

15.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the Principal Purpose referred to in paragraph 3 it may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

## **16 Mergers, Significant Transactions and other transaction requirements**

16.1 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.

16.2 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.

16.3 “Significant Transaction” means:

16.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 20% of the value of the Trust’s gross assets before the acquisition;

16.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 20% of the value of the Trust’s gross assets before the disposition; or

16.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 20% of the value of the Trust’s gross assets before the transaction.

16.4 For the purpose of this paragraph 16:

16.4.1 “gross assets” means the total of fixed assets and current assets;

16.4.2 in assessing the value of any contingent liability for the purposes of sub paragraph 16.3.3 the Directors:

16.4.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and

16.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

16.4.2.3 may take account of the likelihood of the contingency occurring.

- 16.5 Where the Trust has a single requirement for goods, services or works, and a number of transactions are to be entered into to fulfill that requirement, the value of the transaction for the purpose of paragraph 16.3 is the aggregate value of each of those transactions.
- 16.6 The Trust shall inform, as soon as is reasonably practicable, the Council of Governors of any transaction which it has approved which in its opinion is likely to have a negative effect on the Trust's reputation.

## **17 Indemnity**

- 17.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 17.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors or Directors to meet all or any liabilities which are properly the liability of the Trust under paragraph 17.1.

## **18 Instruments and acts of the Trust etc.**

- 18.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 18.2 The Trust is to have a seal, but this is not to be affixed except in accordance with the provisions of the Standing Orders for the Board of Directors.
- 18.3 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

## **19 Engagement**

- 19.1 The Trust has adopted an Engagement Policy for matters relating to interaction between the Council of Governors and the Board of Directors.

## **20 Amendment of the Constitution**

- 20.1 This Constitution may only be amended with the approval of:
- 20.1.1 more than half of the members of the Board of Directors voting; and
  - 20.1.2 more than half of the members of the Council of Governors voting.
- 20.2 Amendments made under paragraph 20.1 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 amendment, not accord with Schedule 7 of the 2006 Act.
- 20.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

- 20.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
- 20.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 20.4 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.
- 20.5 The Trust shall inform the Independent Regulator of any amendments to the Constitution.

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## Annex 1: PUBLIC CONSTITUENCIES OF THE TRUST

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
<b>Ashfield</b>	<p>All Wards of Ashfield District Council, plus the Wards of:</p> <ul style="list-style-type: none"> <li>• Ravenshead; and</li> <li>• Newstead,</li> </ul> <p>from Gedling District Council</p>	<p>50</p> <p>(Total Pop. 119,224)</p>	4
<b>Mansfield</b>	<p>All wards of Mansfield District Council, plus the Ward of Welbeck,</p> <p>from Bassetlaw District Council</p>	<p>50</p> <p>(Total Pop. 100,427)</p>	4
<b>Newark &amp; Sherwood</b>	<p>All Wards of Newark &amp; Sherwood District Council, plus the Wards of:-</p> <ul style="list-style-type: none"> <li>• Trent and Tuxford,</li> </ul> <p>from Bassetlaw District Council;</p> <p>and the Wards of:</p> <ul style="list-style-type: none"> <li>• Loveden; and</li> <li>• Saxonwell,</li> </ul> <p>from South Kesteven District Council;</p> <p>and the Wards of:</p> <ul style="list-style-type: none"> <li>• Oak;</li> <li>• Bingham East;</li> <li>• Bingham West;-</li> <li>• Cranmer; and</li> <li>• Thoroton;</li> </ul> <p>from Rushcliffe District Council</p>	<p>50</p> <p>(Total Pop. 134,124)</p>	4

<b>Derbyshire</b>	<p>Wards in the District Council of: Bolsover:</p> <ul style="list-style-type: none"> <li>• Blackwell;</li> <li>• Pinxton;</li> <li>• Pleasley;</li> <li>• Scarcliffe;</li> <li>• Shirebrook East;</li> <li>• Shirebrook Langwith;</li> <li>• Shirebrook North West;</li> <li>• Shirebrook South East;</li> <li>• Shirebrook South West;</li> <li>• South Normanton East;</li> <li>• South Normanton West; and</li> <li>• Tibshelf, and</li> <li>• Amber Valley</li> <li>• Alfreton;</li> <li>• Ironville &amp; Riddings;</li> <li>• Somercotes; and</li> <li>• Swanwick.</li> </ul> <p>Wards in the District Council of North East Derbyshire</p> <ul style="list-style-type: none"> <li>• Holmewood and Heath</li> </ul>	<p>30</p> <p>(Total Pop. 65,124)</p>	<p>2</p>
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<b>Rest of East Midlands</b>	<p>Any area within an electoral constituency of the East Midlands region not covered above. In geographical terms ,this covers the local authority districts across</p> <ul style="list-style-type: none"> <li>• the rest of Derbyshire,</li> <li>• the rest of Nottinghamshire,</li> <li>• Rutland,</li> <li>• Lincolnshire,</li> <li>• Leicestershire,</li> <li>• Northamptonshire</li> </ul> <p>All members within this new public constituency area, and no other people who are ineligible to vote, have been included in these elections.</p>	<p><b>500</b></p> <p><b>(Total pop 3,758,198)*.</b></p>	<p>1</p>
<b>Totals</b>	<b>Population</b>	<b>4177097</b>	
	<b>Minimum Membership</b>	<b>680</b>	
	<b>Public Governors</b>		<b>15</b>

\*Source: National Statistics (Nomis: [www.nomisweb.co.uk](http://www.nomisweb.co.uk))

## **Annex 2 : Staff Constituency**

### **Staff Classes**

1. There shall be six Staff Classes as follows:
  - 1.1 The Kings Mill Hospital Class being:
    - 1.1.1 those staff employed primarily at, and Subcontractor Personnel engaged primarily at King's Mill Hospital or any other Hospital excluding Newark Hospital and Mansfield Community Hospital; and
    - 1.1.2 staff who provide community services or exercise corporate functions for the Trust but who are not employed at any Hospital;
  - 1.2 the "Newark Hospital Class" being those staff employed primarily at and Sub-contractor Personnel engaged primarily at Newark Hospital;
  - 1.3 the "Mansfield Community Hospital Class" being those staff employed primarily at and Sub-contractor Personnel engaged primarily at Mansfield Community Hospital; and
  - 1.4 the "Volunteers Class" being those Volunteers engaged at one or more of the Hospitals.
2. The minimum number of Members required for each Staff Class shall be:
  - 2.1 King's Mill Hospital Class – 850
  - 2.2 Newark Hospital Class - 100
  - 2.3 Mansfield Community Hospital Class - [ ]
  - 2.4 Volunteer Class – [ ]
3. The Staff Classes shall be entitled to elect the following number of Governors:
  - 3.1 three (3) elected by the King's Mill Hospital Class;
  - 3.2 two (2) elected by the Newark Hospital Class;
  - 3.3 one (1) elected by the Mansfield Community Hospital Class; and
  - 3.4 one (1) elected from the Volunteer Class.

## **Annex 3 – Model Election Rules**

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**Annex 4 – Board of Directors Standing Orders**

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**Annex 5 – Council of Governors Standing Orders**