

NHS FOUNDATION TRUST

CONSTITUTION

**MAY 2006
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**THE NEWCASTLE UPON TYNE HOSPITALS
NHS FOUNDATION TRUST**

(A PUBLIC BENEFIT CORPORATION)

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

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

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

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

1. Definitions

1.1 In this constitution:-

"the 2003 Act"	means the Health and Social Care (Community Health and Standards) Act 2003;
"the 1977 Act"	means the National Health Service Act 1977;
"applicant NHS Trust"	means the NHS Trust which made the application to become an NHS Foundation Trust;
"area of the Trust"	means the area consisting of all the areas specified in Annex 1 as an area for a public constituency;
"authorisation"	authorisation granted by the Independent Regulator pursuant to the 2003 Act;
"Board of Directors"	means the board of directors as constituted in accordance with this constitution;
"Council of Governors"	means the Council of Governors as constituted in accordance with this constitution;
"Director"	means a director on the board of directors;
"financial year"	means- (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and (b) each successive period of twelve months beginning with 1st April.

"he"	means he or she
"Independent Regulator"	means the regulator for the purposes of Part I of the 2003 Act;
"Local Authority Governor"	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of an area specified in Annex 1 as an area for a public constituency;
"Member"	means a Member of the Trust;
"other partnership Governor"	means a member of the Council of Governors appointed by a partnership organisation other than a Primary Care Trust or university providing a medical or dental school to the Trust specified in paragraph 7.3
"PCT Governor"	means a member of the Council of Governors appointed by a Primary Care Trust for which the Trust provides goods or services;
"Public Governor"	means a member of the Council of Governors elected by the members of the public constituency;
"Secretary"	means the Secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a Joint, Assistant or Deputy Secretary;
"Staff Governor"	means a member of the Council of Governors elected by the members of the staff constituency;
"the Trust"	means the Newcastle upon Tyne Hospitals NHS Foundation Trust;
"University Governor"	means a member of the Council of Governors appointed by a university providing a medical or dental school to a hospital of the Trust.

2 Name

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

3 Principal Purpose

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

4 Other Purposes

- 4.1 The purpose of the Trust (as required by the 2003 Act) is to provide goods and services for purposes related to the provision of health care in accordance with its statutory duties and the terms of the Independent Regulator's authorisation.
- 4.2 The Trust may also carry on activities other than those mentioned above subject to any restrictions in the Independent Regulator's authorisation. These activities must be for the purpose of making additional income available in order to carry on the Trust's principal purpose better.

5 Powers

- 5.1 The Trust is to have all the powers of an NHS Foundation Trust set out in the 2003 Act, subject to the terms of its authorisation.
- 5.2 The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 5.3 In particular the Trust may:
- 5.3.1 acquire and dispose of property;
 - 5.3.2 enter into contracts;
 - 5.3.3 accept gifts of property (including property to be held on trust for the purposes of the Trust or for any purpose relating to the health service);
 - 5.3.4 employ staff.
- 5.4 Any power of the Trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 5.5 The Trust may also for the purposes of or in connection with its functions and subject to the term of its authorisation:
- 5.5.1 borrow money;
 - 5.5.2 invest money (other than money held by the Trust as a trustee), which may include investment by:
 - (a) forming, or participating in forming bodies corporate
 - (b) otherwise acquiring membership of bodies corporate;
 - 5.5.3 give financial assistance (whether by way of loan, guarantee or otherwise) to any person.

6 Members

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

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

6.2 Public Constituencies

- 6.2.1a The public constituencies are to be known by the names listed in column 1 of Annex 1.
- 6.2.1 Members of the Trust who are members of a public constituency listed in column 1 of Annex 1 are to be individuals-
 - (a) who live in the area specified for that constituency in the corresponding entry in column 2 of that Annex; and
 - (b) who are not eligible to become a member of the staff constituency and are not Members of any other constituency or otherwise disqualified for membership under paragraph 6.4; and
 - (c) who have each made an application for membership to the Trust, as set out at Annex 7.
- 6.2.2 The minimum number of Members required for each public constituency mentioned in column 1 of Annex 1 is to be the number given in the corresponding entry in column 3 of that Annex.

6.3 Staff Constituency

- 6.3.1a The staff constituency is to be divided into 6 classes of individuals follows:
 - (a) the medical and dental staff class;
 - (b) the nursing and midwifery and related staff class
 - (c) the Health Professionals Council and related staff class
 - (d) the administrative & clerical, management and hospital chaplains staff class
 - (e) the ancillary and estates staff class; and
 - (f) the volunteers staff class.
- 6.3.1b The members of the medical and dental staff class are individuals who are members of the staff constituency who are fully registered persons within the meaning of the Medicines Act 1956 and, in the case of medical practitioners, following the coming into force of the Medical Act 1983 (Amendment) Order 2002 (S.I. 2202/3135) who hold a licence to practise.
- 6.3.1c The members of the nursing and midwifery and related staff class are individuals who are members of the staff constituency who are not fully

registered persons within the meaning of the Medicines Act 1956, but whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professions established by section 25 of the NHS Reform and Health Care Professions Act 2002 and who are registered with the Nursing and Midwifery Council. Also included within this group are non-professionally qualified staff groups.

- 6.3.1d The members of the Health Professionals Council and related staff class are individuals who are members of the staff constituency who are not fully registered persons within the meaning of the Medicines Act 1956, but whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professions established by section 25 of the NHS Reform and Health Care Professions Act 2002 and who are not registered with the Nursing and Midwifery Council. Also included within this group are non-professionally registered staff groups.
- 6.3.1e The members of the administrative & clerical, management and hospital chaplains staff class are individuals who are members of the staff constituency who do not come within paragraphs 6.3.1.b, 6.3.1.c or 6.3.1.d above and are designated by the Trust as administrative & clerical, management staff or hospital chaplains.
- 6.3.1f The members of ancillary and estates staff class are individuals who are members of the staff constituency and are designated by Trust as ancillary and estates staff; and
- 6.3.1g The members of the volunteers staff class are members of any of the League of Friends, the Chaplaincy Volunteers, the WRVS (on site), the Community Advisory Panel or the Friends of the Fleming.
- 6.3.1 Members of the Trust who are members of the staff constituency are to be individuals: –
- (a) who are employed under a contract of employment by the Trust; or
 - (b) who are not so employed but who nevertheless exercise functions for the purposes of the Trust; or
 - (c) who are honorary members of staff; or
 - (d) who being members of the voluntary staff class exercise functions for the purposes of the Trust; and
 - (e) who satisfy the minimum duration requirements set out in paragraph 3(5) of Schedule 1 to the 2003 Act, that is to say –
 - (f) who are not disqualified for membership under paragraph 6.4 below; and
 - (i) in the case of individuals described at (a) and (c) above,

(aa) who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or

(bb) who have been continuously employed by the Trust for at least 12 months;

(ii) in the case of individuals described at (b) and (d) above, who have exercised the functions for the purposes of the Trust for at least 12 months; and

(g) who –

(i) have each made an application for membership to the Trust,

6.3.2 The minimum number of members required for the staff constituency is to be 1750.

6.3.3 A person who is eligible to be a Member of the staff constituency (see paragraph 6.3.1 above) may not become or continue as a Member of any constituency other than the staff constituency.

6.4 **Disqualification for Membership**

6.4.1 A person may not be a Member of the Trust if he –

(a) is under the age of 18 years

(b) if, within the last 5 years, they have been involved in a serious incident of violence against a member of the Trust's staff or registered volunteers or at any of the Trust's hospitals or facilities.

(c) has habitually and persistently and without reasonable grounds instituted complaints against the Trust and are classified as a vexatious complainant under the terms of Trust policy.

(d) if they have, within the preceding two years, been dismissed, otherwise than by reason of redundancy, from any paid employment with any NHS body.

(e) if there are reasonable grounds, in the opinion of the Council of Governors, to believe that they are likely to act in a way detrimental to the interests of the Trust.

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

6.5 **Termination of Membership**

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

- (a) resigns by notice to the Secretary
- (b) ceases to fulfil the requirements of paragraph 6.2, or 6.3;
- (c) is disqualified from membership by reason of paragraph 6.4.

6.6 **Voting at Governor Elections**

6.6.1 A person may not vote at an election for a Governor unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a member of the constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

7 **Council of Governors**

7.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, PCT Governors, Local Authority Governor, University Governor, and other Partnership Governors.

7.2 The Council of Governors of the Trust is to include-

- (a) 24 Public Governors
- (b) 7 Staff Governors
- (c) 3 PCT Governors
- (d) 1 Local Authority Governor
- (e) 1 University Governor
- (f) 4 other partnership Governors

7.2.1 The aggregate number of members of public Governors is to be more than half the total membership of the Council of Governors.

7.3 The organisations specified as partnership organisations that may each appoint a member of the Council of Governors are:

Community Advisory Panel

The Pentagon Partnership

North East Assembly

Northumbria University.

7.4 **Public Governors**

- 7.4.1 Members of a public constituency may elect any of their number to be a public Governor and the number of Governors to be elected by each constituency shall be as set out in Annex 1.
- 7.4.2 If contested, the election must be by secret ballot.
- 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.
- 7.4.4 A person may not stand for election to the Council of Governors as a public Governor unless, within the period specified in 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 for which the election is being held and is not prevented from being a Governor by paragraph 8 to Schedule 1 of the 2003 Act or paragraph 7.12 below (disqualification). It is an offence to knowingly or recklessly make a declaration under section 36 of the 2003 Act which is false in a material particular.
- 7.4.5 Paragraph 6.6.1 (voting at Governor elections) applies.

7.5 **Staff Governors**

- 7.5.1 Members of a staff class of the staff constituency may elect any of their number to be a staff Governor for that class and each staff class is to elect one Governor, with the exception of the nursing and midwifery staff class which shall elect two Governors.
- 7.5.2 If contested, the election must be by secret ballot.
- 7.5.3 The Election Scheme including the process if the election is uncontested, is set out in Annex 3.
- 7.5.4 A person may not stand for election to the Council of Governors as a staff Governor unless, within the period specified in 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 staff constituency for which the election is being held and is not prevented from being a Governor by paragraph 8 to Schedule 1 of the 2003 Act or paragraph 7.12 below (disqualification).

7.6 **PCT Governors**

- 7.6.1 There will be 3 PCT Governors appointed as follows:
- (a) 1 Governor appointed by Newcastle PCT pursuant to a process agreed between the PCT and the Trust.
 - (b) 1 Governor appointed by Gateshead PCT pursuant to a process agreed between the PCT and the Trust. Such appointment shall be for a 3 year term. At the end of this term, and at the end of each subsequent 3 year term, the Council of Governors shall be entitled to nominate any one of the

PCTs within the Northumberland, Tyne and Wear Strategic Health Authority area listed in Annex 4(b) to appoint a Governor for a 3 year term.

- (c) 1 Governor appointed by Durham and Chester-le-Street PCT pursuant to a process agreed between the PCT and the Trust. Such appointment shall be for a 3 year term. At the end of this term, and at the end of each subsequent 3 year term, the Council of Governors shall be entitled to nominate any one of the PCTs within the County Durham and Tees Valley and Cumbria and Lancashire Strategic Health Authorities areas listed in Annex 4(c) to appoint a Governor for a 3 year term.

7.7 Local Authority Governors

- 7.7.1 1 Local Authority Governor appointed by Newcastle City Council pursuant to a process agreed between that local authority and the Trust.

7.8 University Governors

- 7.8.1 1 University Governor appointed by the University of Newcastle upon Tyne in accordance with a process agreed with the Trust.

7.9 Other Partnership Governors

- 7.9.1 The other Partnership Governors are to be appointed by the organisations listed in paragraph 7.3, in accordance with processes agreed with the Trust.

7.10 Terms of Office

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

- (d) cease to hold office if they cease to be a member of the staff constituency.

7.10.3 Subject to paragraph 7.6.1, PCT Governors-

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

7.10.4 the Local Authority Governor -

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

7.10.5 University Governor-

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

7.10.6 Other partnership Governors

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

7.11 Termination of Tenure

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

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

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

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

7.12 Disqualification

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

- (a) in the case of a Staff Governor or a Public Governor, he ceases to be a member of the constituency he represents;
- (b) in the case of a PCT Governor, Local Authority Governor, University Governor, Local Authority or other Partnership Governor, the sponsoring PCT, local authority, university or organisation withdraw their sponsorship of him;
- (c) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (d) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (e) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (f) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (g) he is a person whose tenure of office as the Chairman or as a member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non attendance at meetings, or for non disclosure of a pecuniary interest;
- (h) he is an Executive or Non Executive Director of the Trust, or a Governor, Non Executive Director, Chairman, Chief Executive officer or employee of another NHS organisation;

- (i) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had his name included in such a list;
- (j) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs.
- (k) he has been disqualified by any of the following regulatory bodies: the General Medical Council, the Nursing and Midwifery Council, the Health Professions Council, the General Dental Council, the General Optical Council, the Royal Pharmaceutical Society of Great Britain, the General Chiropractic Council or the General Osteopathic Council.
- (l) his name has been placed on registers of Schedule 1 offenders pursuant to the Sex Offenders Act 1977 and/or the Children and Young Persons Act 1933.

7.12.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified for appointment under paragraph 7.12.1, he shall notify the Secretary to the Trust in writing of such disqualification.

If it comes to the notice of the Secretary to the Trust at the time of his appointment or later that the Governor is so disqualified, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect.

Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor.

7.13 Vacancies

7.13.1 Where membership of the Council of Governors ceases for one of the reasons set out in paragraphs 7.11 or 7.12 above

- (a) Public and Staff Governors shall be replaced by by-elections, in accordance with the relevant Electoral Scheme set out in Annex 3 save that, if there is still a majority of Public Governors on the Board and/or there are no fewer than seventeen Public or no fewer than four Staff Governors the relevant post or posts may remain vacant until the next cycle of elections; and
- (b) PCT Governors, University Governors and other partnership Governors are to be replaced in accordance with the processes agreed pursuant to paragraphs 7.6 to 7.9.

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

7.14 Roles and Responsibilities of Governors

7.14.1 The roles and responsibilities of the Governors are-

- (a) at a General Meeting –
 - (i) to appoint or remove (such removal to be effective on the approval of 75% of the Council of Governors) the Chairman and the other Non Executive Directors. The initial Chairman appointed by the Council of Governors is to be the Chairman of the applicant NHS trust if he wishes to be appointed. The other initial Non Executive Directors appointed by the Council of Governors are, so far as possible, to be Non Executive Directors (other than the Chairman) of the applicant Trust who wish to be appointed. The removal of a Non Executive Director requires the approval of three-quarters of the members of the Board,
 - (ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the Non Executive Directors,
 - (iii) to appoint or remove the Trust's auditor at a general meeting of the board,
 - (iv) to be presented with the annual accounts, any report of the auditor on them and the annual report;
- (b) to approve (by a majority of the Council of Governors voting) an appointment (by the Non Executive Directors) of the Chief Executive other than the initial Chief Executive of the Trust appointed in pursuance of paragraph 19(6) of Schedule 1 to the 2003 Act;
- (c) to give the views of the Council of Governors to Directors for the purposes of the preparation (by the directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to the independent Regulator;
- (d) to consider the annual accounts, any report of the auditor on them and the annual report;
- (e) to respond as appropriate when consulted by the Directors;
- (f) to establish mechanisms for meeting and consulting with members of the Trust.

7.15 Expenses

- 7.15.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides. These are to be published in the annual report
- 7.15.2 The remuneration and allowances for Non Executive Directors set by the Governors are also to be published in the annual report.

7.16 Remuneration

7.16.1 Governors are not to receive remuneration.

7.17 Meetings

7.17.1 The Chairman of the Trust or, in his absence, a Vice-Chairman is to preside at meetings of the Council of Governors.

7.17.2 Meetings of the Council of Governors are to be open to members of the public except in the following circumstances

- (a) during the consideration of any material or discussion in relation to a named person employed by or proposed to be employed by the Trust;
- (b) during the consideration of any material or discussion in relation to a named person who is or has been or is likely to become a patient of the Trust or a carer in relation to such patient;
- (c) during the consideration of any matter which, by reason of its nature, the Council is satisfied should be dealt with on a confidential basis.

7.17.3 The Council of Governors is to meet at least 4 times per year.

7.17.4 At a general meeting, within 6 months of the end of the financial year the Council of Governors is to receive and consider the annual accounts, any report of the auditor on them, and the annual report.

7.17.5 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 2.

7.17.6 A Governor elected to the Council of Governors by a public constituency or the staff constituency may not vote at a meeting of the Council of Governors unless, within a month of his election, he has made a declaration in the form specified at paragraph 7.17.7 stating which constituency he is a member of and is not prevented from being a Governor by paragraph 8 of Schedule 1 to the 2003 Act or under this constitution

7.17.7 The form referred to in paragraph 7.17.6 is as set out in Annex 6.

7.18 Committees and Subcommittees

7.18.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint sub-committees.

7.18.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.

7.19 Conflicts of Interest of Governors

If a Governor has a pecuniary or non-pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council of Governors, he shall disclose that to the rest of the Council of Governors as soon as he is aware of it. If a Governor is in any doubt whether an interest should be disclosed he should discuss the position with the Chair. The Council of Governors, in consultation with the Board of Directors, shall adopt Standing Orders specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter, as appropriate.

8 Board of Directors

8.1 The trust is to have a Board of Directors. It is to consist of executive and Non Executive Directors

8.2 The Board is to include—

(a) The following Non Executive Directors-

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

(b) the following Executive Directors -

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

8.3 Subject to paragraph 8.3.1 below, only a member of the public constituency or an individual exercising functions for the University of Newcastle upon Tyne is eligible for appointment as a Non Executive Director.

8.3.1 Paragraph 8.3 above does not apply to the appointment of any initial Non Executive Director in pursuance of paragraph 19 of Schedule 1 to the 2003 Act.

- 8.4 Subject to the provisions in paragraph 8.5.1 regarding initial appointments, Non Executive Directors are to be appointed in accordance with a process of open competition outlined as follows:
- (a) There shall be a committee of the Trust (“the Search Committee”) which shall, taking into account the composition of the board and the likely needs of the Trust at the relevant time, prepare selection criteria for the Non Executive Directors; and
 - (b) The Trust shall publicly advertise the posts to be filled; and
 - (c) The Search Committee shall put forward to the Council of Governors a shortlist of suitable candidates for appointment based on the selection criteria referred to in 8.4 (a).
- 8.4A 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.

8.5 Terms of Office

- 8.5.1 The Chairman and the Non Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting. The initial Chairman and the other Non Executive Directors are to be appointed for the unexpired period of their respective terms of office as Chairman or (as the case may be) Non Executive Director of the applicant NHS trust or 12 months whichever is the longer. Details of the Chairman and Non Executive Directors of the NHS trust to be appointed as the initial Chairman and Non Executive Directors of the Trust are attached at Annex 8.
- 8.5.2 The Chief Executive (and accounting officer) and the Finance Director shall hold offices for a period in accordance with the terms and conditions of office decided by the relevant committee of Non Executive Directors.
- 8.5.3 The Executive Directors, other than the Chief Executive and the Finance Director, shall hold office for a period in accordance with the terms and conditions decided by the relevant committee of Non Executive Directors (or, pending the establishment of such a committee, in accordance with the terms and conditions decided by the applicant NHS Trust’s Board of Directors).

8.6 Disqualification

- 8.6.1 A person may not be a Director of the Trust if: –
- (a) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
 - (b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - (c) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

- (d) in the case of a Non Executive Director, he no longer satisfies paragraph 8.3.
- (e) he is a person whose tenure of office as a Chairman or as a Member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, for non attendance at meetings, or for non disclosure of a pecuniary interest;
- (f) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had his name included on such a list;
- (g) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
- (h) he is disqualified under the Company Directors Disqualification Act 1986
- (i) he has not, upon appointment, delivered a statement agreeing to be bound by the Trust's Code of Conduct for Directors.

8.7 Roles and Responsibilities

- 8.7.1 The powers of the Trust are to be exercisable by the Board of Directors on its behalf.
- 8.7.2 Any of those powers may be delegated to a committee of Directors or to an Executive Director.
- 8.7.3 A committee of Non Executive Directors established as an audit committee is to monitor, review and carry out such other functions as are appropriate.
- 8.7.4 It is for the Non Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and accounting officer). The initial Chief Executive (and accounting officer) is to be the chief officer of the applicant NHS trust if s/he wishes to be appointed.
- 8.7.5 It is for a committee consisting of the chairman, the Chief executive (and accounting officer) and the other Non Executive Directors to appoint or remove the Executive Directors.
- 8.7.6 The Trust is to establish a committee of Non Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Executive Directors, but pending the establishment of such a committee these matters are to be decided in accordance with the terms and conditions decided by the applicant NHS Trust's Board of Directors.
- 8.7.7 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.
- 8.7.8 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.
- 8.7.9 The functions of the Trust under sub-paragraphs (a) and (b) of paragraph 14.6 below are delegated to the Chief Executive as accounting officer.

9 Meetings of Directors

- 9.1 The Board of Directors, in consultation with the Council of Governors, is to adopt Standing Orders covering the proceedings and business of its meetings. These are to include setting a quorum for meetings, both of Executive and Non Executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.
- 9.2 Meetings of the Board of Directors are to be open to members of the public except during the consideration of any matter which, by reason of its nature, the board of directors is satisfied should be dealt with on a confidential basis, which shall include any matters upon which publicity would be prejudicial to the public interest in accordance with the Public Bodies (Admission to Meetings) Act 1960.

10 Conflicts of Interest of Directors

- 10.1 If a Director has a pecuniary or non-pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the board, he shall disclose that to the rest of the board as soon as he is aware of it. If a Director is in any doubt whether an interest should be disclosed he should discuss the position with the Chair. The Board of Directors, in consultation with the Council of Governors, shall adopt Standing Orders specifying the arrangements for excluding Directors from discussion or consideration of the contract or other matter, as appropriate.
- 10.2 Standing Orders may permit the Chairman to require any relevant Director to withdraw from the meetings during any discussion of a matter in which such Director has declared an interest and/or require that such Director may not vote on the matter in question.

11 Registers

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

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: –
- (a) a copy of the current constitution;
 - (b) a copy of the current authorisation;
 - (c) a copy of the latest annual accounts and of any report of the auditor on them;
 - (d) a copy of the latest annual report;
 - (e) a copy of the latest information as to its forward planning;
 - (f) a copy of any notice given under section 23 of the 2003 Act (Regulator's notice to failing NHS foundation trust).
- 12.2 Any person who requests it is to be provided with a copy or extract from any of the above documents.
- 12.3 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 2003 Act; and, so far as those registers are required to be available: –
- (a) They are to be available free of charge at all reasonable times,
 - (b) A person who requests it is to be provided with a copy of or extract from them.
- 12.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.
- 12.5 The board of directors will provide the following documents to such external bodies as may require them (including but not limited to the Independent Regulator, CHAI and the Audit Commission):
- (a) a copy of the current constitution;
 - (b) a copy of the current authorisation;
 - (c) a copy of the latest annual accounts and of any report of the auditor on them;
 - (d) a copy of the latest annual report;
 - (e) a copy of any notice given under section 23 of the 2003 Act (Regulator's notice to failing NHS foundation trust);
 - (f) the members of the Council of Governors;
 - (g) the Directors.

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 Part 1 of the 2003 Act.
- 13.2 A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 1 to the 2003 Act.
- 13.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 7.14.1, and monitoring of the auditor's functions by a committee of Non Executive Directors is covered in paragraph 8.7.3.
- 13.4 An officer of the Audit Commission may be appointed with the agreement of the Commission.
- 13.5 The Auditor is to carry out his duties in accordance with Schedule 5 to the 2003 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

14 Accounts

- 14.1 The Trust is to keep accounts in such form as the Independent Regulator may with the approval of the Treasury direct.
- 14.2 The accounts are to be audited by the Trust's auditor.
- 14.3 The following documents will be made available to the Comptroller and Auditor General for examination at his request: –
- (a) the accounts;
 - (b) any records relating to them; and
 - (c) any report of the auditor on them.
- 14.4 The Trust (through its Chief Executive and accounting officer) is to prepare in respect of each financial year annual accounts in such form as the Independent Regulator may with the approval of the Treasury direct.
- 14.5 In preparing its annual accounts, the Trust is to comply with any directions given by the Independent Regulator with the approval of the Treasury as to: –
- (a) the methods and principles according to which the accounts are to be prepared;
 - (b) the information to be given in the accounts.
- 14.6 The Trust must –
- (a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

- (b) once it has done so, send copies of those documents to the Independent Regulator.

15 Annual Reports and Forward Plans

15.1 The Trust is to prepare annual reports and send them to the Independent Regulator.

15.2 The reports are to give-

- (a) 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; and
- (b) any other information the Independent Regulator requires.

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

- (a) the form of the reports;
- (b) when the reports are to be sent to it;
- (c) the periods to which the reports are to relate.

15.4 The Trust is to 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 8.7.7 above).

16 Indemnity

16.1 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 Instruments etc.

17.1 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.

17.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

18 Dispute Resolution Procedures

18.1 The Trust is to establish appropriate dispute resolution procedures with its employees, contractors and members. These are to be approved by the Council of Governors.

19 Amendment of the Constitution

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

20 Dissolution of the Trust

- 20.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2003 Act.