

**AUTHORISATION  
of**

**CALDERSTONES PARTNERSHIP NHS FOUNDATION TRUST**

**(pursuant to section 35 of the National Health Service Act 2006)**



Signature: .....

*William Hargreaves*

**1 April 2009**

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**SCHEDULE 1 Constitution**

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## **PART 1 Authorisation**

1. Monitor (“Monitor”), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 (“**the Act**”) and all other powers exercisable by Monitor, hereby authorises Calderstones NHS Trust to become an NHS Foundation Trust (“**the Trust**”), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 April 2009.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

## **PART 2 Interpretation and construction**

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.

7. In this Authorisation:

“ancillary services” means services which support the provision of the mandatory goods and services listed in Schedule 2.

“property” is land and buildings owned or leased by the Trust.

“the Board of Directors” means the Board of Directors of the Trust.

“the provision of goods and services for purposes related to the provision of health care” includes the provision of social care services.

“high security psychiatric services” has the same meaning as in section 4 of the Act.

## **PART 3 Conditions**

### 1. Principal Purpose

The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England. This does not preclude the provision of cross-border services to other parts of the United Kingdom.

### 2. General duty

The Trust shall exercise its functions effectively, efficiently and economically.

### 3. Constitution

- (1) The Trust shall secure that its constitution is in accordance with any regulations made under section 59 of the Act (conduct of elections).
- (2) The Trust may make amendments to its constitution with the approval of Monitor.
- (3) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

### 4. Compliance and enforcement

- (1) The Trust shall comply with:
  - any requirements imposed on it under the Act or any other enactment;
  - the Conditions of this Authorisation;
  - the terms of its constitution;
  - if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and
  - the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.
- (2) The Trust shall comply with any guidance issued by Monitor, unless Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.
- (3) A failure to comply may result in Monitor taking enforcement action under sections 52, 53 or 54 of the Act.

## 5. Governance

- (1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.
- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

## 6. Health care and other standards

- (1) The Trust shall put and keep in place and comply with arrangements for the purpose of monitoring and improving the quality of health care provided by and for the Trust.
- (2) The Trust shall comply with statements of standards in relation to the provision of health care published by the Secretary of State under section 46 of the Health and Social Care (Community Health and Standards) Act 2003, as currently set out in the Department of Health publication Health and Social Care Standards and Planning Framework (July 2004) as may be amended from time to time.
- (3) If applicable, the Trust shall comply with any statements of standards with respect to social care services which the Secretary of State may issue from time to time.
- (3) If applicable, the Trust shall comply with any statements of standards with respect to security and risk management which the Secretary of State may issue from time to time.

## 7. Mandatory Services

- (1) The Trust is required to provide for the purposes of the health service in England the goods and services listed in Schedule 2 in the volumes or amounts specified therein ("**mandatory goods and services**") which goods and services in the volumes or amounts specified are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said goods and services in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force. This requirement includes an obligation to provide any ancillary services, accommodation and other facilities related to said goods and services and which are generally accepted to be required for the effective, efficient and economic provision of said goods and services in the volumes or amounts specified.
- (2) The Trust is required to provide education and training to third parties for the purposes of the health service in England listed in Schedule 3 in the volumes or amounts specified therein ("**mandatory education and training**"), which are to be provided pursuant to a legally binding contract or contracts between

the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

- (3) Monitor reserves the right to vary the goods and services and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(1) and the education and training to third parties and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(2), in particular in order to ensure the continuity of local service provision and the fulfilment of local health needs as they may vary from time to time.
- (4) The Board of Directors of the Trust shall regularly review and shall at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.

#### 8. Authorised Services

- (1) The Trust is authorised to provide goods and services (including education and training, accommodation and other facilities) for purposes related to the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said goods and services and that the provision of said goods and services will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (2) Monitor reserves the right to refuse to authorise specific goods and services in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(1).
- (3) The Trust shall establish and maintain an up to date register of the goods and services referred to in Condition 8(1). With respect to education and training, only education and training provided to third parties shall be included in the register. Accommodation and other facilities do not require to be included in the register of goods and services.
- (4) The Trust shall make the register of goods and services available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.
- (5) The Trust is authorised to carry out research in connection with the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said research, that all relevant authorisations with respect to the carrying out of said research have been secured, that the said research will be carried out in accordance with the generally accepted ethical standards and that the said research will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.

- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).
- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.
- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

- (1) Property needed for the purposes of providing any of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 (including the ancillary services, accommodation and other facilities related thereto) and the mandatory training and education referred to in Condition 7(2) and listed in Schedule 3 is protected.
- (2) The Trust may not dispose any protected property without the approval of Monitor.
- (3) The Trust shall establish and maintain an asset register in respect of protected property, in accordance with guidance to be issued by Monitor.
- (4) The Trust shall make the asset register available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.

10. Private health care

The proportion of total income of the Trust in any financial year derived from private charges shall not be greater than the percentage set out in Schedule 4.

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

The Trust shall at all times remain a going concern as defined by relevant accounting standards in force from time to time.

13. Dividend payments on Public Dividend Capital

The Trust shall be required to pay annually to the Department of Health a dividend on its Public Dividend Capital at a rate to be determined from time to time by the Secretary of State.

14. Information

The Trust shall disclose to Monitor and directly to any third parties as may be specified by the Secretary of State the information, if any, specified in Schedule 6 as may be varied from time to time and such other information as Monitor may from time to time require.

15. Entry and inspection of premises

The Trust shall allow Monitor, any member, officer or member of staff of Monitor, and any agent acting on behalf of Monitor, to enter and inspect premises owned or controlled by the Trust.

16. Fees

The Trust shall pay to Monitor such reasonable annual fee, if any, as may be determined by Monitor.

17. Representative membership

The Trust shall continue to take such reasonable steps as may be required by Monitor, by such date or within such period as may be specified by Monitor, to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) the patients' constituency is representative of those eligible for such membership.

18. Co-operation with other bodies

- (1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Commission for Health Care Audit and Inspection, NHS foundation trusts, other NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.
- (2) The Trust shall co-operate with the Commission for Social Care Inspection, the Mental Health Act Commissioners, the National Oversight Group for High Security Hospitals and such other bodies (as may be specified in any future guidance to be published by Monitor) which have a remit covering activities related to the provision of mental healthcare services.
- (3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

The Trust shall assist the relevant authorities with, and participate in, local and national emergency planning and provision.

20. Information technology

The Trust shall participate in the national programme for information technology, in accordance with any guidance issued by Monitor.

21. Audit committee

- (1) The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- (2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

- (1) The Audit Code for NHS Foundation Trusts (“the Audit Code”) contains the directions of Monitor under paragraph 24(5) of Schedule 7 to the Act with respect to the standards, procedures and techniques to be adopted by the auditor.
- (2) The Trust shall comply with the Audit Code.
- (3) The auditor shall comply with the Audit Code.

23. Public interest reporting

The Trust shall forward a report to Monitor within thirty days (or such shorter period as Monitor may specify) of the auditor issuing a public interest report in terms of Schedule 10 paragraph 3 of the Act. The report shall include details of the Trust’s response to the issues raised within the public interest report.

24. Notification

The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under this authorisation or any financial or performance thresholds which Monitor may specify from time to time.

25. Information given to Parliament and to Members of Parliament

In addition to any statutory requirements, the Chairman, Chief Executive or any other person giving information to Parliament or to a Member of Parliament on behalf of a Trust shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.

**AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 1**

The Constitution (and Annexures)

# **NHS Foundation Trust Constitution**

## **Calderstones Partnership NHS Foundation Trust**

# THE CALDERSTONES PARTNERSHIP NHS FOUNDATION TRUST CONSTITUTION

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## **1. Name**

The name of the foundation trust is Calderstones Partnership NHS Foundation Trust (the trust).

## **2. Principal purpose**

The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.

## **3. Powers**

- 3.1** The powers of the trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 3.2** The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 3.3** Any of these powers may be delegated to a committee of directors or to an executive director.

## **4. Membership and constituencies**

- 4.1** The trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 4.1.1** a Public Constituency
  - 4.1.2** a Staff Constituency and
  - 4.1.3** a Patients' Constituency comprising patients and carers of patients. The Patients' Constituency shall be known as the Service Users' / Carers' Constituency
- 4.2** The members of the trust are those individuals whose names are entered in the register of members.
- 4.3** Members may attend and participate at members meetings, vote in elections for, and stand for election to the Council of Governors, and take such other part in the affairs of the trust as is provided in this constitution.
- 4.4** The trust shall hold members meetings in accordance with the provisions of Annex 9.

## **5. Application for membership**

- 5.1** An individual who is eligible to become a member of the trust may do so on application to the trust.
- 5.2** Subject to this constitution, membership is open to any individual who is entitled under this constitution to be a member of the Public Constituency, one of the classes of the Staff Constituency or one of the classes of the Service Users' / Carers' Constituency and who (unless they are a member of one of the classes of the Staff Constituency or one of the Service Users' classes of the Service Users' / Carers' Constituency and automatically become a member by default) completes a membership application form in whatever form the Secretary specifies.
- 5.3** Subject to paragraphs 8.7 and 8.8 below, the Chief Executive of the trust shall make a final decision about the constituency or class or area within a constituency of which an individual is eligible to be a member.

## **6. Public Constituency**

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

## **7. Staff Constituency**

- 7.1** Subject to paragraph 7.3 below an individual who is employed by the trust under a contract of employment (which, for the avoidance of doubt includes full and part time contracts of employment) with the trust may become or continue as a member of the trust provided:
  - 7.1.1** he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 7.1.2** he has been continuously employed by the trust and/or the Predecessor Trust under a contract of employment for at least 12 months.

**7.2** Subject to paragraph 7.3 below individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least twelve (12) months.

**7.3** An individual who is:

**7.3.1** under a period of notice (whether under his employment with the trust, or where such individual qualifies for membership by virtue of paragraph 7.2, under such individual's contract of or for service with any other body); or

**7.3.2** within three (3) months of the expiry of his fixed term employment contract with the trust;

may not be invited and shall not be entitled to become a member of the trust's Staff Constituency. For the avoidance of doubt;

**7.3.3** when the conditions set out at paragraph 7.3.1 or 7.3.2 apply to an existing member of the Staff Constituency then such individual's membership shall continue for so long as the conditions set out at paragraphs 7.1 and/or 7.2 remain satisfied; and

**7.3.4** an individual who fails to qualify as a member of the Staff Constituency by virtue of this paragraph 7.3 may, subject to paragraph 6 above, still qualify as a member of the Public Constituency following the end of his period of notice or the expiry of his fixed term employment contract with the trust.

**7.4** For the avoidance of doubt, the eligibility to be a member of the Staff Constituency described at paragraph 7.2 above does not include those who assist or provide services to the trust on a voluntary basis.

**7.5** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

**7.6** The Staff Constituency shall be divided into five (5) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

**7.7** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

**Automatic membership by default – staff**

**7.8** An individual who is:

**7.8.1** eligible to become a member of the Staff Constituency, and

**7.8.2** invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

**8. Service Users' / Carers' Constituency**

**8.1** An individual who has, within the period specified below, attended any of the trust's hospitals as either a Service User or as a Carer may become a member of the trust.

**8.2** The period referred to above shall be the period of five (5) years immediately preceding the date of an application by the Service User or Carer to become a member of the trust.

**8.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Service Users' / Carers' Constituency.

**8.4** The Service Users' / Carers' Constituency shall be divided into three (3) descriptions of individuals who are eligible for membership of the Service Users' / Carers' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Service Users' / Carers' Constituency.

**8.5** An individual providing care to a Service User in pursuance of a contract (including a contract of employment) , or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Carers' class of the Service Users' / Carers' Constituency.

**8.6** The minimum number of members in each class of the Service Users' / Carers' Constituency is specified in Annex 3.

## **Automatic membership by default – Service Users**

**8.7** An individual who is:

**8.7.1** eligible to become a member of the Service Users' / Carers' Constituency (otherwise than as a Carer), and

**8.7.2** invited by the trust to become a member of a specified constituency and a member of a specified class within that specified constituency,

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

**8.8** For the purposes of paragraph 8.7 above, the constituency and, where applicable, the class to be specified:

**8.8.1** if he is eligible to be a member of any public constituency, is that constituency,

**8.8.2** otherwise, is the Service Users' / Carers' Constituency and, where applicable, the class of which he is eligible to become a member.

## **9. Restriction on membership**

**9.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class of the trust.

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

**9.3** A member of any constituency must be sixteen (16) years of age or over.

**9.4** Subject to paragraph 9.5 below, an individual who:

**9.4.1** has threatened, harassed, harmed or abused staff, patients and/or visitors of the trust or the Predecessor Trust; or

**9.4.2** has been a vexatious complainant. For the purposes of this paragraph a vexatious complainant is an individual who is found by the trust (applying the relevant trust policy) to have abused or used inappropriately the trust's or the Predecessor Trust's complaints procedure

shall be refused membership of the trust or where an existing member shall have his membership of the trust withdrawn.

**9.5** Where a Service User or former service user of the trust behaves or has behaved in any of the ways described in paragraph 9.4 above then that Service User or former service user may nevertheless be allowed to become or continue as a member of the trust where such behaviour is or was attributable to his clinical condition. The Chief Executive of the trust shall be responsible for deciding whether or not any such Service User or former service user may become or continue as a member of the trust and shall make any such decision having taken appropriate advice from the clinical team.

**9.6** Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 – Membership and Members Meetings.

## **10 Council of Governors – composition**

**10.1** The trust is to have a Board of Governors, which shall comprise both elected and appointed governors. The board of Governors shall be known as the Council of Governors.

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

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

## **11 Council of Governors – election of governors**

**11.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

**11.2** The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the Authorisation Date are attached at Annex 5.

**11.3** A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 43 of the constitution (amendment of the constitution).

**11.4** An election, if contested, shall be by secret ballot.

## **12 Council of Governors - tenure**

- 12.1** Subject to the provisions relating to initial governors below an elected governor may hold office for a period of up to 3 years following each election that resulted in their election as a governor.
- 12.2** An elected governor shall cease to hold office if he ceases to be a member of the constituency or class or area of the constituency by which he was elected, which, for the avoidance of doubt, includes in respect of a Public Governor a governor moving their principal residence from one area within the Public Constituency to another.
- 12.3** An elected governor shall be eligible for re-election at the end of his term.
- 12.4** An elected governor may not, if re-elected for more than a single term of office hold office for more than six (6) consecutive years in total.
- 12.5** An elected governor shall not be eligible for re-election if they have already held office for more than three (3) consecutive years.
- 12.6** The trust shall conduct annual elections for elected governors during each year (being a period of 12 months commencing on the Authorisation Date or an anniversary of the Authorisation Date) in respect of each governor whose term of office shall expire at the end of that year, with any governors elected pursuant to such an annual election taking office at the end of that year (i.e. on the next anniversary of the Authorisation Date following such election).
- 12.7** In the first three (3) years after the Authorisation Date annual elections for elected governors should be conducted on a cycle to reflect the following terms of office:
- 12.7.1** The four (4) initial Public Governors who polled the highest votes in the initial elections for Public Governors will serve a term of office of three (3) years;
- 12.7.2** The four (4) initial Public Governors who polled the next highest number of votes in the initial elections for Public Governors will serve a term of office of two (2) years;
- 12.7.3** The remaining three (3) initial Public Governors elected in the initial elections for Public Governors (following the application of paragraphs 12.7.1 and 12.7.2 above) will serve a term of office of one (1) year;
- 12.7.4** The two (2) initial Staff Governors who polled the highest percentage of votes cast in the initial elections for Staff Governors will serve a term of office of three (3) years;

- 12.7.5** The two (2) initial Staff Governors who polled the next highest percentage of votes cast in the initial elections for Staff Governors will serve a term of office of two (2) years;
  - 12.7.6** The remaining two (2) initial Staff Governors elected in the initial elections for Staff Governors will serve a term of office of one (1) year;
  - 12.7.7** The two (2) initial Service Users' / Carers' Governors who polled the highest percentage of votes cast in the initial elections for Service Users' / Carers' Governors will serve a term of office of three (3) years;
  - 12.7.8** The two (2) initial Service Users' / Carers' Governors who polled the next highest percentage of votes cast in the initial elections for Service Users' / Carers' Governors will serve a term of office of two (2) years;
  - 12.7.9** The remaining two (2) initial Service Users' / Carers' Governors elected in the initial elections for Service Users' / Carers' Governors will serve a term of office of one (1) year.
- 12.8** All elected governors elected following an election carried out in accordance with paragraph 12.7 above and at all subsequent annual elections may hold office for a period of up to three (3) years from the anniversary of the Authorisation Date on which their election became effective.
- 12.9** Annex 6 contains additional provisions in relation to the tenure of appointed governors and vacancies amongst governors.

### **13. Council of Governors – disqualification and removal**

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

**13.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.

**13.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

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

**14.1** The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 below) or, in his absence the Deputy Chair (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Council of Governors.

**14.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting (whether for the whole or part of such meeting) whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons arising from the nature of that business following appropriate resolution by the Council of Governors.

**14.3** The Chair may exclude any member of the public from a meeting of the Council of Governors if he is interfering with or preventing the proper conduct of the meeting.

#### **15. Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

#### **16. Council of Governors - conflicts of interest of governors**

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. The Standing Orders for 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.

#### **17. Council of Governors – travel expenses**

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

**18. Council of Governors – further provisions**

Further provisions with respect to the Council of Governors are set out in Annex 6.

**19. Board of Directors – composition**

**19.1** The trust is to have a Board of Directors to manage the business of the trust and to exercise all powers of the trust (subject to any contrary provisions in the 2006 Act and/or this constitution), which shall comprise both executive and non-executive directors.

**19.2** The Board of Directors is to comprise:

**19.2.1** a non-executive Chair

**19.2.2** five (5) other non-executive directors; and

**19.2.3** five (5) executive directors.

**19.3** One of the executive directors shall be the Chief Executive.

**19.4** The Chief Executive shall be the Accounting Officer.

**19.5** One of the executive directors shall be the finance director.

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

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

**20. Board of Directors – qualification for appointment as Chair or another non-executive director**

**20.1** A person may be appointed as the Chair or another non-executive director only if –

**20.1.1** he is a member of the Public Constituency, or

**20.1.2** he is a member of the Service Users' / Carers' Constituency, or

**20.1.3** where any of the trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

**20.1.4** he is not disqualified by virtue of paragraph 26 below.

**20.2** The Chair must on appointment for each and every term of office meet the Independence Criteria and may not have previously served as the chief executive of the trust or the Predecessor Trust.

**20.3** Every other non-executive director must on appointment and throughout his term of office meet the Independence Criteria.

**20.4** The Independence Criteria are that the Chair on appointment for each and every term of office and every other non-executive director on appointment and throughout his term of office should;

**20.4.1** not have been an employee of the trust within the last five (5) years;

**20.4.2** not have, or have had within the last three (3) years a pecuniary and/or a relevant and material interest in any matter within the meaning of paragraph 5 of Annex 8;

**20.4.3** not receive or have received additional remuneration from the trust (apart from a director's fee), participate in the trust's performance-related pay scheme (if any) or be or have been a member of the trust's pension scheme;

**20.4.4** not have any close family tie with any director, senior employee or professional advisor to the trust;

**20.4.5** not have any significant business link with any other director of the trust including through any involvement in any company or body; or

**20.4.6** not have served on the trust Board of Directors for more than nine (9) years from the date of their first appointment (including any tenure as a director of the Predecessor Trust).

**21. Board of Directors – appointment and removal of Chair and/or other non-executive directors**

**21.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the trust and/or the other non-executive directors.

**21.2** Appointment of the Chair or of a non-executive director shall require the approval of the majority of the members of the Council of Governors.

**21.3** Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**21.4** The initial Chair and the initial non-executive directors are to be appointed in accordance with paragraph 22 below.

**22. Board of Directors – appointment of initial Chair and initial other non-executive directors**

**22.1** The Chair of the applicant NHS trust shall be appointed as the initial Chair of the trust if he wishes to be appointed.

**22.2** The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS trust (other than the Chair) who wish to be appointed.

**22.3** The criteria for qualification for appointment as a non-executive director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial Chair and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

**22.4** An individual appointed as the initial Chair or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chair or (as the case may be) non-executive director of the applicant NHS trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

**23. Board of Directors – appointment of deputy Chair**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy Chair. If the Chair is unable to discharge their office as a Chair of the trust, the deputy shall be acting Chair of the trust.

**24. Board of Directors - appointment and removal of the Chief Executive and other executive directors**

**24.1** The Chair and the other non-executive directors shall appoint or remove the Chief Executive.

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

**24.3** The initial Chief Executive is to be appointed in accordance with paragraph 25 below.

**24.4** A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other

executive directors. The Chair shall act as the chair of such committee.

**25. Board of Directors – appointment of initial Chief Executive**

**25.1** The chief officer of the applicant NHS trust shall be appointed as the initial Chief Executive of the trust if he wishes to be appointed.

**25.2** The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

**26. Board of Directors – disqualification**

The following may not become or continue as a member of the Board of Directors:

**26.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

**26.2** a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.

**26.3** a person who within the preceding five (5) years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him.

**26.4** a person who is a member of the Council of Governors;

**26.5** a person who is the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the trust;

**26.6** a person who is a member of a LINK (or any transitional body that is the successor to all or part of the functions of a Patients' Forum);

**26.7** a person who is a member of a local authority's Overview and Scrutiny Committee covering health matters;

**26.8** a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

**26.9** a person whose tenure of office as a chair or as an officer or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for nondisclosure of a pecuniary interest;

**26.10** a person who has within the preceding five (5) years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

**26.11** in the case of a non-executive director, a person who has

**26.11.1** refused without reasonable cause to fulfill any training requirement established by the Board of Directors; or

**26.11.2** refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.

**26.12** on the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the trust's director responsible for human resources;

**26.13** they are a person who has had his name removed or been suspended from any list (including any performers list maintained by a primary care trust) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included in such a list or had his suspension lifted or qualification reinstated;

**26.14** they have within the preceding five (5) years been:

**26.14.1** made subject to a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41;

**26.14.2** made subject to an interim Hospital Order under section 38 of the MHA;

**26.14.3** made subject to a transfer direction under section 48 of the MHA whether or not subject to restrictions under section 49; and/or

**26.14.4** made subject to an order under the Criminal Procedure (Insanity) Act 1964 as amended;

**26.15** they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation.

## **27. Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

## **28. Board of Directors - conflicts of interest of directors**

If a director 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 Board of Directors, the director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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

**29.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.

**29.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

**29.3** The trust may reimburse executive directors' travelling and other costs and expenses incurred in carrying out their duties as the remuneration committee of non-executive directors decides. These are to be disclosed in the annual report.

**29.4** The remuneration and allowances for directors are to be disclosed in bands in the annual report.

## **30. Registers**

The trust shall have:

**30.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes or areas within it, the class or area to which he belongs;

**30.2** a register of members of the Council of Governors;

**30.3** a register of interests of governors;

**30.4** a register of directors; and

**30.5** a register of interests of the directors.

### **31. Admission to and removal from the registers**

**31.1** The Secretary shall add to the register of members the name of any individual who is accepted as a member of the trust under the provisions of this constitution.

**31.2** The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

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

**32.1** The trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

**32.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of –

**32.2.1** any member of the Service Users' / Carers' Constituency; or

**32.2.2** any other member of the trust, if he so requests.

**32.3** So far as the registers are required to be made available:

**32.3.1** they are to be available for inspection free of charge at all reasonable times; and

**32.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

**32.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

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

**33.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

**33.1.1** a copy of the current constitution;

**33.1.2** a copy of the current authorisation;

**33.1.3** a copy of the latest annual accounts and of any report of the auditor on them;

- 33.1.4** a copy of the latest annual report;
  - 33.1.5** a copy of the latest information as to its forward planning;  
and
  - 33.1.6** a copy of any notice given under section 52 of the 2006 Act.
- 33.2** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 33.3** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

#### **34 Auditor**

- 34.1** The trust shall 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 Schedule 10 of the 2006 Act.
- 34.2** A person may only be appointed as the 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.
- 34.3** An officer of the Audit Commission may be appointed as auditor with the agreement of the Audit Commission. Where an officer of the Audit Commission is appointed as auditor, the Audit Commission is to charge the trust such fees for his services as will cover the full cost of providing them.
- 34.4** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 34.5** The auditor shall be required to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

#### **35. Audit committee**

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

#### **36. Accounts**

- 36.1** The trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.
- 36.2** The accounts are to be audited by the trust's auditor.

**36.3** The following documents will be made available to the Comptroller and Auditor General for examination at his request:

**36.3.1** the accounts;

**36.3.2** any records relating to them; and

**36.3.3** any report of the auditor on them.

**36.4** The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of HM Treasury direct.

**36.5** The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

**36.6** In preparing its annual accounts, the Accounting Officer shall require the trust to comply with any directions given by Monitor with the approval of the Treasury as to:

**36.6.1** the methods and principles according to which the accounts are to be prepared; and

**36.6.2** the information to be given in the accounts;

and shall be responsible for the duties of the trust as set out in paragraph 25 of Schedule 7 to the 2006 Act. The trust shall comply with any such requirements of the Accounting Officer.

**36.7** The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a meeting of the Council of Governors.

**36.8** The trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to Monitor.

## **37 Annual report and forward plans**

**37.1** The trust shall prepare an Annual Report and send it to Monitor.

Each Annual Report is to contain:

**37.1.1** information on any steps taken by the trust to secure that (taken as a whole) the actual membership of its Public Constituency, the Service Users' / Carers' Constituency and of the classes of the Staff Constituency are representative of those eligible for such membership; and

**37.1.2** any other information Monitor requires including information required by 'the NHS Foundation trust Code of Governance' as summarised at Schedule A of that Code;

**37.1.2.1** a statement of how the Board of Directors and the Council of Governors operate, including a high-level statement of which types of decisions are to be taken by each of the boards and which are to be delegated by the Board of Directors under a scheme of delegation;

**37.1.2.2** the names of the Chair, the Deputy Chair, the chief executive, the senior independent director and the chairs and members of the nomination, audit and remuneration committees;

**37.1.2.3** the number of meetings of the Board of Directors and the committees set out in paragraph 37.1.2.2 above and individual attendance by directors;

**37.1.2.4** the names of the non-executive directors whom the Board of Directors determine to be independent, with reasons where necessary;

**37.1.2.5** a description of each director's expertise and experience;

**37.1.2.6** a clear statement about the Board of Directors' balance, completeness and appropriateness;

**37.1.2.7** the names of the governors and details on their constituency, whether they are elected or appointed and the duration of their appointments;

**37.1.2.8** the number of meetings of the Council of Governors and individual attendance by governors and directors; and

**37.1.2.9** any other significant commitments of the Chair and any changes to them during the year.

**37.2** The trust is to comply with any decision Monitor makes as to:

**37.2.1** the form of Annual Reports;

**37.2.2** when each Annual Report is to be submitted; and;

**37.2.3** the periods to which the Annual Reports are to relate.

**37.3** The trust shall give information as to its forward planning in respect of each financial year to Monitor.

**37.4** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

**37.5** In preparing the document, the directors shall have regard to the views of the Council of Governors.

**38. Meeting of Council of Governors to consider annual accounts and reports**

The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

**38.1** the annual accounts

**38.2** any report of the auditor on them

**38.3** the annual report.

**39. Instruments**

**39.1** The trust shall have a seal.

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

**39.3** 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.

**40. Indemnity**

The trust may provide an indemnity to any member of the Council of Governors, the Board of Directors or the Secretary that if any such person acts honestly and in good faith such person 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 functions, save where they have acted recklessly. Any costs arising in this way will be met by the trust. The trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Secretary.

**41. Dissolution of the trust**

The trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

## 42. Notices

- 42.1** Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.
- 42.2** A notice shall be treated as delivered forty-eight (48) hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, immediately after it was sent provided it was sent between the hours of 09.00 and 17.00 on a working day, and at 09.00 on the next working day if such notice was sent on a non working day or outside the hours of 09.00 to 17.00 hours.

## 43. Amendment of the constitution

- 43.1** Amendments by the trust of its constitution are to be made with the approval of Monitor. For the avoidance of doubt, any amendments to the annexes attached to this constitution must also be approved by Monitor.
- 43.2** Additional provisions relating to amendment of the constitution are contained at Annex 10.

## 44. Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

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

**the 2006 Act** is the National Health Service Act 2006.

**the Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

**Authorisation Date** means the date that the trust's initial authorisation as an NHS Foundation trust took effect.

**Carer** means a person who has attended any of the trust's premises from which services are provided as the carer of a Service User within the last five years and who provides (or in the case of a current in-patient provided prior to admission) substantial regular care for a Service User, provided that such person is not providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation.

**Constitution** means this constitution and all annexes to it.

**Council of Governors** means the Council of Governors (referred to in the 2006 Act as the “Board of Governors”) as constituted in accordance with this constitution.

**Financial Year** means (a) the period beginning with the date on which the trust is authorised as a Foundation Trust and ending with the next 31 March; and (b) each successive period of twelve (12) months beginning with 1 April.

the **Independence Criteria** means those criteria set out at paragraph 20.4 above.

**Local Authority Governor** means a governor appointed by one or more local authorities.

the **MHA** means the Mental Health Act 1983.

**Monitor** is the Independent Regulator of NHS Foundation Trusts, as provided by Section 31 of the 2006 Act.

**Partnership Governor** means a governor appointed by a partnership organisation.

**PCT Governor** means a governor appointed by a Primary Care Trust.

**Predecessor Trust** means Calderstones NHS Trust.

**Public Constituency** means all those individuals who live in the areas specified in Annex 1.

**Public Governor** means a governor elected by the members of one of the areas in the Public Constituency.

**Secretary** means the secretary of the trust or any other person appointed by the trust pursuant to paragraph 2.1 of Annex 8 to perform the duties of the secretary, including a joint, assistant or deputy secretary.

**Service User** means any person whose name is recorded as a patient on the trust’s electronic patient record system or other record maintained by the trust for the purpose of identifying patients of the trust and who has attended the trust as a patient in the last five years.

**Service Users’ / Carers’ Constituency** means all those individuals who are eligible for membership of the trust as set out at paragraphs 8.1 to 8.7 (inclusive).

**Staff Constituency** means all those individuals who are eligible for membership of the trust as set out at paragraphs 7.1 to 7.4 (inclusive).

**Staff Governor** means a governor elected by the members of one of the classes of the Staff Constituency.

**terms of authorisation** are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

**voluntary organisation** is a body, other than a public or local authority, the activities of which are not carried on for profit.

## ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

Areas Comprising the Public Constituency	Electoral Wards falling within the following district/unitary authorities	Minimum Number of Members
Ribble Valley	Clitheroe, Longridge with Bowland, Ribble Valley North East, Ribble Valley South West	50
Lancashire (outside Ribble Valley)	Blackburn with Darwen, Blackpool, Burnley, Chorley, Fylde, Hyndburn, Lancaster, Pendle, Preston, Rossendale, South Ribble, West Lancashire, Wyre	50
Greater Manchester	Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford, Wigan	50
Merseyside and Cheshire	Knowsley, Liverpool, St Helens, Sefton, Wirral, Ellesmere Port and Neston, Vale Royal, Macclesfield, Chester, Congleton, Crewe and Nantwich	50
Yorkshire and the rest of England	All electoral wards in England not falling within an area detailed above in this table as being an area of the Public Constituency	20

## **ANNEX 2 – THE STAFF CONSTITUENCY**

(Paragraphs 7.6 and 7.8)

The Staff Constituency is divided into five (5) classes as follows:

1. Medical Staff (which shall include Consultants, doctors and junior doctors) who are registered with their regulatory body to practise.
2. Qualified Staff (which shall include nursing staff) who are registered with their regulatory body to practise.
3. Clinical Support Staff (which shall include support workers and senior support workers).
4. Psychology and Professions Allied to Medicine (PAMS) (which shall include psychologists, occupational therapists, speech therapists, dieticians, social workers, podiatrists, dental technicians and forensic support service staff)
5. Non-clinical support staff.

The minimum number of members in each class is to be 20% of the total number of employees who are eligible for membership of that class.

### **ANNEX 3 – THE SERVICE USERS' / CARERS' CONSTITUENCY**

(Paragraphs 8.4 and 8.6)

The Service Users' / Carers' constituency is divided into three (3) classes as follows:

Class	Minimum Number
Secure Service Users (in-patients)	50
Community Service Users	40
Carers	10

## ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors shall comprise thirty (30) governors composed as set out below and as illustrated in the following table:

- Eleven (11) governors elected by members of the trust from the Public Constituency with each area as set out in Annex 1 appointing the following number of governors:
  - Ribble Valley three (3) governors
  - Lancashire (outside Ribble Valley) two (2) governors
  - Greater Manchester two (2) governors
  - Merseyside and Cheshire two (2) governors
  - Yorkshire and the rest of England two (2) governors
  
- Six (6) governors elected by members of the trust from the Service Users' / Carers' Constituency with the following number of governors elected from each class within the Service User's / Carers' Constituency by that class:
  - Secure Service Users two (2) governors
  - Community Service Users two (2) governors
  - Carers two (2) governors
  
- Six (6) governors elected by the Staff Constituency, with the following number of governors elected from each class within the Staff Constituency by that class:
  - Medical Staff who are registered with their regulatory body to practise one (1) governor
  - Qualified Staff who are registered with their regulatory body to practise one (1) governor
  - Clinical Support Staff two (2) governors
  - Psychology and PAMs one (1) governor
  - Non-Clinical Support staff one (1) governor
  
- One (1) governor appointed by Western Cheshire Primary Care Trust or any successor primary care trust for which the trust provides goods or services.
  
- One (1) governor appointed by Ribble Valley Borough Council and one (1) governor appointed by Trafford Metropolitan Borough Council or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency set out at Annex 1.
  
- One (1) governor appointed by an educational institution from the further and/or higher education sector which shall be The University of Cumbria – St Martin's College.

- One (1) governor appointed by a voluntary organisation which shall be Mencap.
- One (1) governor appointed by Lancashire County Council Children's Services Authority.
- One (1) governor appointed by Lancashire Criminal Justice Board.

The following organisations shall be partnership organisations for the purpose of this constitution:

- The University of Cumbria – St Martin's College
- Mencap
- Lancashire County Council (being the Children's Services Authority)
- Lancashire Criminal Justice Board
- 

The partnership organisations may appoint a governor to the Council of Governors provided always that at the time of appointment the number of appointed governors does not equal or exceed the aggregate number of governors elected by the Public Constituency and the Service Users' / Carers' Constituency.

**Table:**

<b>Public Constituency</b>	<b>Number of Public Governor Seats</b>	
Ribble Valley		<b>3</b>
Lancashire (outside Ribble Valley)		<b>2</b>
Greater Manchester		<b>2</b>
Merseyside and Cheshire		<b>2</b>
Yorkshire and the rest of England		<b>2</b>
	<b>Sub Total</b>	<b>11</b>
<b><u>Staff Constituency</u></b>	<b>Number of Staff Governor Seats</b>	
Medical Staff who are registered with their regulatory body to practise		<b>1</b>
<u>Qualified Staff who are registered with their regulatory body to practise</u>		<b>1</b>
Clinical Support Staff		<b>2</b>
Psychology and PAMs		<b>1</b>
Non-clinical support staff		<b>1</b>
	<b>Sub Total</b>	<b>6</b>

<b>Service Users' / Carers' Constituency</b>	<b>Number of Service Users' / Carers' Governor Seats</b>	
Secure Service Users		<b>2</b>
Community Service Users		<b>2</b>
Carers		<b>2</b>
	<b>Sub Total</b>	<b>6</b>
<b>Appointed Governors Constituency</b>	<b>Number of Appointed Governor Seats</b>	
Western Cheshire Primary Care Trust		<b>1</b>
Ribble Valley Borough Council		<b>1</b>
Trafford Metropolitan Borough Council		<b>1</b>
The University of Cumbria – St Martin's College		<b>1</b>
Mencap		<b>1</b>
Lancashire County Council Children's Services Authority		<b>1</b>
Lancashire Criminal Justice Board		<b>1</b>
	<b>Sub Total</b>	<b>7</b>
	<b>TOTAL</b>	<b>30</b>

## **ANNEX 5 –THE MODEL ELECTION RULES**

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## **Part 1 – Interpretation**

**1. Interpretation** – (1) In these rules, unless the context otherwise requires -

“corporation” means the public benefit corporation subject to this constitution;

“election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;

“the regulator” means the Independent Regulator for NHS foundation trusts; and

“the 2006 Act” means the National Health Service Act 2006

(2) Other expressions used in these rules and in Schedule 7 to the 2006 Act have the same meaning in these rules as in that Schedule.

## Part 2 – Timetable for Election

**2. Timetable** - The proceedings at an election shall be conducted in accordance with the following timetable.

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election

**3. Computation of time** - (1) In computing any period of time for the purposes of the timetable -

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or
- (c) a day appointed for public thanksgiving or mourning,

shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

(2) In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

## Part 3 – Returning Officer

**4. Returning officer** – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

**5. Staff** – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

**6. Expenditure** - The corporation is to pay the returning officer –

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

**7. Duty of co-operation** – The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

#### **Part 4 - Stages Common to Contested and Uncontested Elections**

**8. Notice of election** – The returning officer is to publish a notice of the election stating –

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Governors' Assembly to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

**9. Nomination of candidates** – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer.

**10. Candidate's particulars** – (1) The nomination paper must state the candidate's-

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

**11. Declaration of interests** – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

**12. Declaration of eligibility** – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

**13. Signature of candidate** – The nomination paper must be signed and dated by the candidate, indicating that –

- (a) they wish to stand as a candidate,
- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

**14. Decisions as to the validity of nomination** – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,

- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds –

- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, as required by rule 13.

(3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

**15. Publication of statement of candidates** – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

**16. Inspection of statement of nominated candidates and nomination papers**

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

**17. Withdrawal of candidates** - A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

**18. Method of election** – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then –

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

**Part 5 – Contested Elections**

**19. Poll to be taken by ballot** – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

**20. The ballot paper** – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

**21. The declaration of identity (public and patient constituencies)** – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,

- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

**Action to be taken before the Poll**

**22. List of eligible voters –** (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

**23. Notice of poll -** The returning officer is to publish a notice of the poll stating—

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

**24. Issue of voting documents by returning officer** – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

**25. Ballot paper envelope and covering envelope** – (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

(2) The covering envelope is to have –

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

(3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed declaration of identity if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

## **The Poll**

**26. Eligibility to vote** – An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

**27. Voting by persons who require assistance** – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made

(2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

**28. Spoilt ballot papers** (1) – If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity, and
- (b) has ensured that the declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

**29. Lost ballot papers** – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity,
- (b) has no reason to doubt that the voter did not receive the original ballot paper, and
- (c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

**30. Issue of replacement ballot paper**– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been

received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

**31. Declaration of identity for replacement ballot papers (public and patient constituencies) –** (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter’s signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

### **Procedure for Receipt of Envelopes**

**32. Receipt of voting documents –** (1) Where the returning officer receives a –

- (a) covering envelope, or

- (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

(3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

**33. Validity of ballot paper** – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

- (a) put the declaration of identity if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

- (a) mark the ballot paper “disqualified”,
- (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
- (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

**34. Declaration of identity but no ballot paper (public and patient constituency)** – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “disqualified”,

- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and
- (d) place the declaration of identity in a separate packet.

**35. Sealing of packets** – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

## **Part 6 - Counting the Votes**

**36. Interpretation of Part 6** – In Part 6 of these rules –

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule 44(4) below,

“preference” as used in the following contexts has the meaning assigned below–

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule 41 below,

“surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable papers from the candidate who has the surplus,

“stage of the count” means –

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (e) the exclusion of one or more candidates at any given time,

“transferable paper” means a ballot paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

**37. Arrangements for counting of the votes** – The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

**38. The count** – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

**39. Rejected ballot papers –** (1) Any ballot paper –

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

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

(2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

**40. First stage –** (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

(2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

**41. The quota –** (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only

one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

**42. Transfer of votes** – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

- (a) according to next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped –

- (a) according to the next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

- (a) a transfer value calculated as set out in paragraph (4)(b) above, or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

which ever is the less.

(8) Each transfer of a surplus constitutes a stage in the count.

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

(11) This rule does not apply at an election where there is only one vacancy.

**43. Supplementary provisions on transfer** – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule 42 above –

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,

- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare—
  - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
  - (ii) the recorded total of valid first preference votes.

(3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

**44. Exclusion of candidates – (1) If—**

- (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule 45 below, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

- (a) ballot papers on which a next available preference is given, and
- (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

(4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

(5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

- (a) record –
  - (i) the total value of votes, or
  - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare—
  - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

- (ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.

(12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

(13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest—

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**45. Filling of last vacancies** – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

(2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

(3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

**46. Order of election of candidates** – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

(4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

## **Part 7 – Final Proceedings in Contested and Uncontested Elections**

**47. Declaration of result for contested elections –** (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on Calderstones NHS Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
  - (ii) in any other case, to the chair of the corporation, and
- (a) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (b) the number of rejected ballot papers under each of the headings in rule 39(1),

available on request.

**48. Declaration of result for uncontested elections –** In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

- (a) declare the candidate or candidates remaining validly nominated to be elected,

- (b) give notice of the name of each candidate who he or she has declared elected to the chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

## **Part 8 – Disposal of Documents**

**49. Sealing up of documents relating to the poll –** (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of –

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the declarations of identity,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(3) The returning officer must endorse on each packet a description of –

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

**50. Delivery of documents –** Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

**51. Forwarding of documents received after close of the poll – Where –**

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (d) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chair of the corporation.

**52. Retention and public inspection of documents –** (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

(3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

**53. Application for inspection of certain documents relating to an election –**

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

(4) On an application to inspect any of the documents listed in paragraph (1), –

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation,

must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and
- (ii) that the regulator has declared that the vote was invalid.

## **Part 9 – Death of a Candidate during a Contested Election**

**54. Countermand or abandonment of poll on death of candidate** – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

- (a) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
  - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
  - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

## **Part 10 – Election Expenses and Publicity**

### **Election Expenses**

**55. Election expenses** – Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the regulator under Part 11 of these rules.

**56. Expenses and payments by candidates** - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100

**57. Election expenses incurred by other persons** – (1) No person may –

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

### **Publicity**

**58. Publicity about election by the corporation** – (1) The corporation may –

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

(3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

**59. Information about candidates for inclusion with voting documents - (1)**

The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than 250 words, and
- (b) a photograph of the candidate.

**60. Meaning of “for the purposes of an election” - (1)** In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

(2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

**Part 11 – Questioning Elections and the Consequence of Irregularities**

**61. Application to question an election – (1)** An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by –

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the Regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

- a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

## **Part 12 – Miscellaneous**

**62. Secrecy** – (1) The following persons –

- (a) the returning officer,
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

(2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.

(3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

**63. Prohibition of disclosure of vote** – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

**64. Disqualification** – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

**65. Delay in postal service through industrial action or unforeseen event** – If industrial action, or some other unforeseen event, results in a delay in –

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

## **ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

### **1. Roles and responsibilities of the Council of Governors**

- 1.1** The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the trust's terms of authorisation include:
- 1.1.1** to hold the Board of Directors to account for the performance of the trust, including ensuring that the Board of Directors acts so that the trust does not breach its terms of authorisation;
  - 1.1.2** to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
  - 1.1.3** to undertake such functions as the Board of Directors shall from time to time request;
  - 1.1.4** to prepare and review on an annual basis the trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive directors; and
  - 1.1.5** when appropriate to make recommendations for the revision of this constitution.

### **2. Appointed Governors**

#### **PCT Governors**

- 2.1** The Chief Executive, having consulted Western Cheshire Primary Care Trust or any successor primary care trust for which the trust provides goods or services, is to adopt a process for agreeing the appointment of the PCT Governor with that primary care trust.

#### **Local Authority Governors**

- 2.2** The Chief Executive, having consulted with Ribble Valley Borough Council and Trafford Metropolitan Borough Council or any successor local authority for an area which includes the whole or part of an area forming part of the Public Constituency, is to adopt a process for agreeing the appointment of Local Authority Governors with those local authorities.

#### **Partnership Governors**

- 2.3** The Partnership Governors are to be appointed by the partnership organisations, in accordance with a process agreed by those organisations with the Chief Executive of the trust.

## **General Provisions**

### **2.4 Appointed Governors:**

- 2.4.1** shall normally hold office for a period of three (3) years commencing on the date such appointment is to have effect;
- 2.4.2** are eligible for re-appointment at the end of that period;
- 2.4.3** may not where reappointed hold office for longer than six (6) consecutive years, and shall not be eligible for re-appointment if they have already held office for more than three (3) consecutive years.

### **3. Eligibility to be a Governor**

- 3.1** A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:
  - 3.1.1** they have failed to make or have falsely made any declaration required to be made under Section 60 of the 2006 Act;
  - 3.1.2** they are a director of the trust, or a governor or director of a health service organisation (unless they are an appointed governor appointed by the health service organisation for which they are a governor or director);
  - 3.1.3** they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the trust;
  - 3.1.4** they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
  - 3.1.5** they are a member of a LINK (or any transitional body that is the successor to all or part of the functions of a Patients' Forum), unless that LINK (or that successor body) is a partnership organisation which has appointed them as a Partnership Governor;
  - 3.1.6** being a member of the Public Constituency they refuse to sign a declaration in the form specified by the Secretary, of particulars of their qualification to vote as a member of the trust, and that they are not prevented from being a member of the Council of Governors;
  - 3.1.7** being a member of the Staff Constituency they have a current and unexpired written warning which has been imposed following disciplinary action by the trust or the

Predecessor Trust arising out of their employment with the trust or Predecessor Trust. For the avoidance of doubt, a member will not be precluded from eligibility as a Governor by reason of his suspension or in the event that he is the subject of an ongoing disciplinary procedure and/or fact-finding investigation. Spent disciplinary warnings will not preclude eligibility to be a Governor;

- 3.1.8** they are a vexatious complainant within the meaning of paragraph 9.4 or a persistent litigant;
- 3.1.9** on the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the trust's director responsible for human resources;
- 3.1.10** they have within the preceding five (5) years been lawfully dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service organisation;
- 3.1.11** they are a person whose tenure of office as the chair or as a member or director of a health service organisation has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 3.1.12** they are a person who has had his name removed or been suspended from any list (including any performers list maintained by a primary care trust) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included in such a list or had his suspension lifted or qualification reinstated;
- 3.1.13** they have (unless a member of a Service User class of the Service Users' / Carers' Constituency) within the preceding five (5) years been:
  - 3.1.13.1** made subject to a Hospital Order under section 37 of the MHA whether or not subject to restrictions under section 41;
  - 3.1.13.2** made subject to an Interim Hospital Order under section 38 of the MHA;
  - 3.1.13.3** made subject to a transfer direction under section 48 of the MHA whether or not subject to restrictions under section 49; and/or

**3.1.13.4** made subject to an order under the Criminal Procedure (Insanity) Act 1964 as amended.

**3.1.14** they have (unless a member of a Service User class of the Service Users' / Carers' Constituency) previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation;

**3.1.15** Monitor has exercised its powers to remove them as a governor of the trust or has suspended them from office or has disqualified them from holding office as a governor of the trust for a specified period or Monitor has exercised any of those powers in relation to them on any other occasion whether in relation to the trust or some other NHS Foundation Trust;

and/or

**3.1.16** they have been expelled for whatever reason from membership of or from the post of governor of another NHS Foundation Trust.

**3.2** Where a person has been elected or appointed to be a governor and he becomes disqualified from being a governor he shall notify the trust in writing of such disqualification as soon as practicable and in any event within fourteen (14) days of first becoming aware of those matters which rendered him disqualified.

**3.3** If it comes to the notice of the trust that a governor is disqualified, the trust shall immediately declare him disqualified and give him notice to that effect as soon as practicable.

**3.4** Upon the giving of notice under paragraphs 3.2 and 3.3 above, that person's tenure of office as a governor shall thereupon be terminated and he shall cease to be a governor.

#### **4. Termination of office and removal of Governors**

**4.1** A person holding office as a governor shall immediately cease to do so if:

**4.1.1** they resign by notice in writing to the Secretary;

**4.1.2** they fail to attend three (3) consecutive meetings, unless the other governors are satisfied that:

- 4.1.2.1 the absences were due to reasonable causes;  
and
- 4.1.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable.
- 4.1.3 in the case of an elected governor, they cease to be a member of the constituency or class or area of the constituency by which they were elected which for the avoidance of doubt includes in respect of a Public Governor a governor moving their principal residence from one area within the Public Constituency to another;
- 4.1.4 in the case of an appointed governor, the appointing organisation terminates the appointment;
- 4.1.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;
- 4.1.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for governors; or
- 4.1.7 they are removed from the Council of Governors under the following provisions:
  - 4.1.7.1 a governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining governors present and voting on the grounds that he has committed a serious breach of the code of conduct for governors, or he has acted in a manner detrimental to the interests of the trust, and the Council of Governors consider that it is not in the best interests of the trust for him to continue as a governor.

## **5. Vacancies amongst Governors**

- 5.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:
  - 5.1.1 subject always to the number of appointed governors not exceeding or equaling the total number of Public Governors and Service Users' / Carers' Governors in which case the relevant provisions in Annex 4 will apply, where the vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a

replacement to hold office for the remainder of the term of office of the governor who is being replaced;

**5.1.2** where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:

**5.1.2.1** to call an election within three (3) months to fill the seat for the remainder of the term of office of the governor who is being replaced, or

**5.1.2.2** to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next anniversary of the Authorisation Date. Prior to that Authorisation Date that seat shall be subject to an election in accordance with paragraph 12.6 of the constitution and any governor so elected shall be elected for the unexpired period of the term of office of the original governor whose seat fell vacant.

## **6. Expenses and Remuneration of Governors**

**6.1** The trust may reimburse governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.

**6.2** The trust may at their discretion decide to reimburse the cost and expense of a governor's carer arrangements necessarily and reasonably incurred in such governor carrying out their duties as the Board of Directors decide

**6.3** In respect of a Staff Governor who is an employee of the trust, the Board of Directors shall seek to facilitate such employee's reasonable participation as a Staff Governor during normal working hours to the extent reasonably necessary for the performance of their duties as a Staff Governor (including reasonable time off from his/her contracted duties) and shall not make any corresponding deduction from salary.

**6.4** Governors are not to receive remuneration from the trust otherwise than as set out in paragraphs 6.1 and/or 6.2 and/or 6.3 above of this Annex 6.

## **7. Governors' Code of Conduct**

The trust may from time to time publish a governors' code of conduct and each governor shall be required to follow and observe such code of conduct's provisions.

## **ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **1. Meetings of the Council of Governors**

- 1.1** The Council of Governors is to meet a minimum of four (4) times in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the trust, and on the trust's website.
- 1.2** Meetings of the Council of Governors may be called by the Secretary, or by the Chair.
- 1.3** Meetings of the Council of Governors may be called by ten (10) governors (including at least two (2) elected governors and two (2) appointed governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request.
- 1.4** The Secretary shall call a meeting on at least fourteen (14) but not more than twenty eight (28) calendar days' notice.
- 1.5** If the Secretary fails to call such a meeting following notice pursuant to paragraph 1.3 of this Annex 7 above then the Chair or ten (10) governors, whichever is the case, shall call such a meeting.
- 1.6** Agendas will be sent to all the governors at least five (5) working days before the meeting and supporting papers will, wherever possible, accompany the agenda.
- 1.7** A governor wishing a matter to be included on an agenda shall make his request in writing to the Chair at least fourteen (14) working days before the meeting. The request should state whether the item of business is proposed to be discussed in the presence of the public and should include appropriate supporting information. Requests made less than ten (10) days before a meeting may be included on the agenda at the discretion of the Chair.
- 1.8** Subject to paragraph 1.9 of this Annex 7 below, twelve (12) governors including no fewer than seven (7) Public Governors, no fewer than two (2) Staff Governors, no fewer than one (1) Service Users' / Carers' Governor and no fewer than one (1) appointed governor shall form a quorum for the Council of Governors.

- 1.9** The Council of Governors shall not be quorate unless a majority of governors present are Public Governors.
- 1.10** The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Council of Governors.
- 1.11** The Council of Governors may agree that governors can participate in its meetings by telephone or by the use of video conferencing facilities and/or webcam, where such facilities are available. Participation in a meeting in any of these manners shall, where the Council of Governors has agreed to participation in such a manner, be deemed to constitute presence in person at the meeting.
- 1.12** Subject to this constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 1.13** In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.
- 1.14** The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors and may invite directors and other persons to serve on such committees. The Council of Governors may, through the Secretary request that external advisors assist them or any committee they appoint in carrying out its duties.
- 1.15** All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the governors attending the meeting.

## **2. Disclosure of interests**

- 2.1** Any governor who has:
- 2.1.1** any pecuniary interest in any contract, proposed contract or other matter concerning the trust; and/ or
- 2.1.2** any interests which are “relevant and material” to the business of the trust

shall declare such interest to the Secretary and the Council of Governors and shall withdraw from the meeting and play no part in

the relevant discussion or decision and shall not vote on the issue (and if inadvertently they do remain and vote, their vote shall not be counted).

- 2.2** Details of any such interest shall be recorded in a register of the interests of governors maintained by the Secretary in accordance with paragraph 30 of the constitution.
- 2.3** Any governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining governors.

Subject to the exceptions below, a “relevant and material interest” in a matter may include but is not limited to where a governor:

- 2.3.1** holds any directorship including non-executive directorship of a company;
- 2.3.2** holds any interest or position in any firm or company or business;
- 2.3.3** has any interest in an organisation providing health and social care services to the National Health Service; or
- 2.3.4** holds any position of authority in a charity or voluntary organisation in the field of health and social care;

and such organisation is, in connection with the matter, trading with the trust or entering into a financial arrangement with the trust, or is likely is to be considered as a potential contractor to the trust.

- 2.4** In the case of two persons living together as a couple (whether married or not) the interest of one shall be deemed to be also an interest of the other.
- 2.5** Any travelling or other expenses or other allowances payable to a governor in accordance with this constitution shall not be treated as a pecuniary interest.
- 2.6** The exceptions which shall not be treated as a pecuniary interest or a “relevant and material interest” are as follows:
  - 2.6.1** shares held in any company where the value of those securities does not exceed £10,000 or the number of shares held does not exceed 2% of the total number of issued shares in a company whose shares are listed on any public exchange;

- 2.6.2** an employment contract with the trust held by a Staff Governor;
  - 2.6.3** an employment contract with their employing PCT held by a PCT Governor;
  - 2.6.4** an employment contract with a local authority held by a Local Authority Governor;
  - 2.6.5** an employment contract with a partnership organisation held by a Partnership Governor.
- 2.7** If governors have any doubt about the relevance of an interest, this should be discussed with the Secretary.

### **3. Declaration**

An elected governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the trust and that they are not prevented from being a member of the Council of Governors. An elected governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected governors.

## **ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

- 1. The Appointment and Removal of the Chair and/or other non-executive directors**
  - 1.1** Subject to paragraph 22.3 of the main body of the constitution only a member of the Public Constituency is eligible for appointment as the Chair or another non-executive director.
  - 1.2** The Chair and the other non-executive directors are to be appointed by the Council of Governors using the following procedure:
    - 1.2.1** The Council of Governors will maintain a policy for the appointment of the Chair and the other non-executive directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
    - 1.2.2** The Council of Governors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive directors.
    - 1.2.3** Appropriate candidates (not more than five (5) for each vacancy) will be identified by a nominations committee through a process of open competition, which takes account of the policy maintained by the Council of Governors and the skills and experience required.
    - 1.2.4** The nominations committee will comprise the senior independent director who should act as chair of the nominations committee, two elected governors and one appointed governor. The chair or senior independent director of another Foundation Trust or NHS Trust shall be invited to act as an independent assessor to the nominations committee.
    - 1.2.5** Save in the case of the initial Chair or initial other non-executive directors the Chair and any other non-executive director may hold office for a period of up to 3 years and shall, subject to the Independence Criteria be eligible for re-appointment at the end of his term.
  - 1.3** The removal of the Chair or any other non-executive director shall be a decision of the Council of Governors and shall be carried out in accordance with the following procedures:

- 1.3.1** Any proposal for removal must be proposed by a governor and seconded by no fewer than twenty (20) governors including at least sixteen (16) elected governors and four (4) appointed governors.
- 1.3.2** Written reasons for the proposal shall be provided to the Chair or other non-executive director in question, who shall be given the opportunity to respond to such reasons.
- 1.3.3** In making any decision to remove a non-executive director (other than the Chair), the Council of Governors shall take into account any annual appraisal carried out by the Chair.
- 1.3.4** Removal of the Chair or any other non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 1.3.5** If any proposal to remove the Chair or other non-executive director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove the Chair or such non-executive director based upon the same reasons within twelve (12) months of the meeting.

## **2. Appointments**

- 2.1** The Chief Executive and Chair shall appoint the Secretary of the trust and subject to following good employment practice may also remove a Secretary from that position.
- 2.2** The Board of Directors shall, following consultation with the Council of Governors, appoint one of the non-executive directors to be the senior independent director. The senior independent director shall make himself available to members and governors who have concerns that they do not feel they can raise with the Chair or any executive director of the trust. Recourse to the senior independent director shall not replace the right to instigate the dispute resolution procedures at Annex 10.

## **3. Committees and Delegation**

- 3.1** The Board of Directors may delegate any of its powers to:
  - 3.1.1** a committee of directors; or
  - 3.1.2** to an executive director.
- 3.2** The Board of Directors shall maintain a formal schedule of matters reserved for decision by the Board of Directors

- 3.3** The Board of Directors shall appoint an audit committee of non-executive directors to monitor and review the exercise of the auditor's functions.
- 3.4** The Board of Directors shall appoint a remuneration committee of non executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive directors.
- 3.5** The Board of Directors may appoint committees consisting wholly or partly of persons who are not executive directors or non-executive directors of the trust for any purpose that is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to any such committee.

#### **4. Meetings of the Board of Directors**

- 4.1** The Board of Directors shall meet sufficiently regularly to discharge its duties effectively.
- 4.2** Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all directors at least fourteen (14) working days' written notice of the date and place of every meeting of the Board of Directors.
- 4.3** Meetings of the Board of Directors may be called by the Secretary, or by the Chair.
- 4.4** Meetings of the Board of Directors may be called by four (4) directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after receipt of such a request.
- 4.5** The Secretary shall call a meeting on at least fourteen (14) but not more than twenty-eight (28) calendar days' notice.
- 4.6** If the Secretary fails to call a meeting following notice pursuant to paragraph 4.4 of this Annex 8 then the Chair or four (4) directors, whichever is the case, shall call such a meeting.
- 4.7** Agendas will be sent to all the directors at least five (5) days before the meeting and supporting papers will, wherever possible, accompany the agenda.
- 4.8** A director wishing a matter to be included on an agenda shall make his request in writing to the Chair at least ten (10) working days before the meeting. Requests made less than ten (10) working days before a meeting may be included on the agenda at the discretion of the Chair.

- 4.9** Seven (7) directors including no fewer than two (2) executive directors, and no fewer than two (2) non-executive directors (one of whom must be the Chair or the Deputy Chair of the Board) shall form a quorum.
- 4.10** The Board of Directors may agree that its members can participate in its meetings by telephone or by the use of video conferencing facilities and/or webcam, where such facilities are available. Participation in a meeting in any of these manners shall, where the Board of Directors has agreed to participation in such a manner, be deemed to constitute presence in person at the meeting.
- 4.11** The Chair of the trust or, in their absence, the Deputy Chair of the Board of Directors, is to chair meetings of the Board of Directors.
- 4.12** Subject to the following provisions of this paragraph 4, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
- 4.13** In case of an equality of votes the Chair shall have a second and casting vote.
- 4.14** No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive directors present or by all of the executive directors present.
- 4.15** The Secretary shall keep and maintain a record of the number of meetings of the Board of Directors and the attendance of individual directors.
- 4.16** All decisions taken in good faith at a meeting of the Board of Directors shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the directors attending the meeting.

## **5. Conflicts of Interest of Directors**

- 5.1** Any director who has:
- 5.1.1** any pecuniary interest in any contract, proposed contract or other matter concerning the trust; and/ or
- 5.1.2** any interests which are “relevant and material” to the business of the trust

shall declare such interest to the Secretary and the Board of Directors and shall withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if inadvertently they do remain and vote, their vote shall not be counted).

**5.2** Details of any such interest shall be recorded in the register of the interests of directors maintained by the Secretary in accordance with paragraph 30 of the constitution.

**5.3** A “relevant and material interest” in a matter may include but is not limited to where a director:

**5.3.1** holds any directorship including non-executive directorship of a company;

**5.3.2** holds any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding does not exceed 2% of the total issued share capital or the value of such share holding does not exceed £10,000) or position in any firm or company or business;

**5.3.3** has any interest in an organisation providing health and social care services to the National Health Service; or

**5.3.4** holds a position of authority in a charity or voluntary organisation in the field of health and social care;

and such organisation is, in connection with the matter, trading with the trust or entering into a financial arrangement with the trust, or is likely to be considered as a potential contractor to the trust.

**5.4** In the case of two persons living together as a couple (whether married or not) the interest of one shall be deemed to be also an interest of the other.

**5.5** If directors have any doubt about the relevance of an interest, this should be discussed with the Secretary.

## **6. Role of Secretary of the trust**

**6.1** The Secretary’s role shall include but not be limited to:

**6.1.1** ensuring good information flows within the Board of Directors and committees of the Board of Directors and between senior management, non-executive directors and governors;

**6.1.2** ensuring that the Standing Orders of both the Board of Directors and Council of Governors are complied with;

**6.1.3** advising the Board of Directors and the Council of Governors (through the Chair) of all governance matters;

**6.1.4** being available to give advice and support to individual directors, particularly in relation to the induction of new directors and assistance with professional development.

**7. Additional Provisions**

This Annex 8 is to be read in conjunction with the trust's standing financial instructions, which contain additional provisions.

## **ANNEX 9 – MEMBERSHIP AND MEMBERS MEETINGS**

### **1 Members Meetings**

- 1.1** The trust is to hold a members meeting (called the annual members meeting) within nine (9) months of the end of each Financial Year.
- 1.2** All members meetings other than annual meetings are called special members meetings.
- 1.3** Members meetings are open to all members of the trust, governors and directors, and representatives of the auditor. Annual Members meetings are also open to all members of the public who are not members of the trust, but only in the capacity as an observer (which for the avoidance of doubt does not include any right to address the meeting, speak, be heard or vote at such meeting). Special members meetings should not be open to members of the public unless the Council of Governors decides otherwise.
- 1.4** The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the trust to attend a members meeting.
- 1.5** All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 1.6** The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members arrange for the annual members meeting to be held in different venues each year
- 1.7** The Council of Governors shall also fix an appropriate quorum for each venue provided that the aggregate of the quorum requirements shall not be less than the quorum set out below at the annual members meeting.
- 1.8** At each annual members meeting the Board of Directors shall present to the members:
  - 1.8.1** the annual accounts;
  - 1.8.2** any report of the auditor; and
  - 1.8.3** forward planning information for the next financial year.
- 1.9** At each annual members meeting the Council of Governors shall present to the members:
  - 1.9.1** a report on steps taken to secure that (taken as a whole) the actual membership of each area of its Public Constituency,

each class of the Service Users' / Carers' Constituency and of each of the classes of the Staff Constituency are representative of those eligible for such membership;

**1.9.2** the progress of the membership strategy; and

**1.9.3** any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors.

**1.10** At any members meeting the results of the election and appointment of governors and the appointment of non-executive Directors that have occurred since the preceding members meeting will be announced.

**1.11** Notice of a members meeting is to be given:

**1.11.1** by notice to all members;

**1.11.2** by notice prominently displayed at the head office and at all of the trust's places of business; and

**1.11.3** by notice on the trust's website at least twenty-eight (28) clear days before the date of the meeting.

**1.12** The notice of a members meeting must:

**1.12.1** be given to the Council of Governors and to the Board of Directors, and to the auditor; and

**1.12.2** state whether the meeting is an annual or special members meeting, give the time, date and place of the meeting; and indicate the business to be dealt with at the meeting.

**1.13** Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is twenty-five (25) members which shall include at least five (5) members present from each of the Public Constituency, the Staff Constituency and the Service Users' / Carers' Constituency.

**1.14** The trust may make arrangements for members to vote by post, or by using electronic communications.

**1.15** It is the responsibility of the Council of Governors, the chair of the members meeting and the Secretary to ensure that at any members meeting:

**1.15.1** the issues to be decided are clearly explained; and

**1.15.2** sufficient information is provided to members to enable rational and informed discussion to take place.

- 1.16** The Chair of the trust, or in their absence the Deputy Chair of the Board of Directors, or in their absence one of the other non executive Directors shall act as chair at all members meetings of the trust. If neither the Chair, the Deputy Chair of the Board of Directors or a non executive Director is present, the members of the Council of Governors present shall elect one of their numbers to be chair of that member's meeting and if there is only one (1) governor present and willing to act they shall be chair of that members meeting.
- 1.17** If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 1.18** A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 1.19** Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the chair of the meeting is to have a second or casting vote.
- 1.20** The result of any vote will be declared by the chair of the members meeting and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## **2. Termination of Membership**

- 2.1** A member shall cease to be a member if:
- 2.1.1** they resign by notice to the Secretary;
  - 2.1.2** they die;
  - 2.1.3** they are expelled from membership under this constitution;
  - 2.1.4** they cease to be entitled under this constitution to be a member of the Public Constituency (if a member of the Public Constituency) or of any of the classes of the Staff Constituency (if a member of the Staff Constituency); and/or
  - 2.1.5** it appears to the Secretary that they no longer wish to be a member of the trust, and after enquiries made in accordance with a process approved by the Council of Governors they

fail to demonstrate that they wish to continue to be a member of the trust.

- 2.2** A member may be expelled by a resolution approved by not less than two thirds of the governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 2.2.1** Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the trust.
  - 2.2.2** If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
    - 2.2.2.1** subject to the disputes procedure set out at Annex 10, paragraph 1 dismiss the complaint and take no further action;
    - 2.2.2.2** for a period not exceeding twelve (12) months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
    - 2.2.2.3** arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
  - 2.2.3** If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one (1) month before the meeting with an invitation to answer the complaint and attend the meeting.
  - 2.2.4** At the meeting of the Council of Governors the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
  - 2.2.5** If the member complained of fails to attend the meeting of the Council of Governors without due cause the meeting may proceed in their absence.
  - 2.2.6** A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting of the Council of Governors that the resolution to expel them is carried.

**2.2.7** No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a meeting of the Council of Governors.

## ANNEX 10 – FURTHER PROVISIONS

### 1. Dispute Resolution Procedures

- 1.1** Every unresolved dispute which arises out of this constitution between the trust and:
- 1.1.1** a member;
  - 1.1.2** any aggrieved person who has ceased to be a member within the six (6) months prior to the date of the dispute;
  - 1.1.3** any person bringing a claim under this constitution; or
  - 1.1.4** an office-holder of the trust;
- shall first be discussed informally between the Chief Executive of the trust and the person listed at 1.1.1 to 1.1.4, (the “Aggrieved Person”).
- 1.2** Where such a dispute cannot be resolved between the Chief Executive and the Aggrieved Person within two (2) weeks of referral of any such dispute to them it may be referred by the Aggrieved Person or the trust to the Centre for Effective Dispute Resolution which shall appoint a mediator between the trust and the Aggrieved Person. The costs of such mediation shall be met equally by the trust and the Aggrieved Person and the trust may apply any deposit required pursuant to paragraph 1.4 of this Annex 10 to meet the Aggrieved Person’s share of such cost. If the Aggrieved Person and the trust are unable to resolve such dispute within four (4) weeks of any such referral to mediation then paragraph 1.3 below shall apply.
- 1.3** If the Aggrieved Person and the trust fail to resolve the dispute by way of mediation under the provisions of paragraph 1.2 above then the Aggrieved Person and the trust agree that any such unresolved dispute shall be referred to a single arbitrator agreed by the parties or in the absence of agreement to be nominated by the President for the time being of the Law Society of England and Wales. The arbitrator shall arbitrate any such dispute in accordance with the Arbitration Act 1996. The arbitrator’s decision will be final and binding on all parties, including as to who shall meet the cost of such arbitration.
- 1.4** Any person bringing a dispute must, if required to do so by the trust, deposit with the trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary prior to proceeding to mediation pursuant to paragraph 1.2 above. The arbitrator will decide how the costs of the arbitration will

be paid and what should be done with the deposit (if not expended on any mediation as permitted by paragraph 1.2 above)

## **2. Amendment of the Constitution**

**2.1** No amendment shall be made to this constitution unless:

**2.1.1** it has been approved by the Board of Directors who shall have consulted with the Council of Governors before giving their approval.

**2.1.2** it has been approved by a majority of members present and voting at a members meeting duly called by order of the Council of Governors in accordance with this constitution; and

**2.1.3** it has been approved by Monitor.

**AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 2**

Mandatory Goods and Services

**Schedule 2****Year: 2009-10****Trust: Calderstones Partnership NHS Foundation Trust**

		<b>Learning disability</b>
<b>Sub care group</b>	<b>Currency</b>	
Low Secure	Bed Days	63,145
Medium Secure	Bed Days	14,235
Community	Beds	110
Specialist	Referrals	70

**AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 3**

Mandatory Education and Training

**Schedule 3**  
**Calderstones Partnership NHS Foundation Trust**  
**Mandatory Education and Training Services 2009-10**

<b>Commissioning body</b>	<b>Educational body</b>	<b>Contract Length</b>	<b>Expiry date of contract</b>	<b>Student group</b>	<b>Type of training</b>	<b>Number of Students</b>	<b>Contract Value</b>
		(Years)					(£000s)
NW SHA (WDC)	University (Cumbria)	1 Year	31/03/2010	Nursing	Widening Access	13	148
NW SHA (WDC)	University (UCLAN)	1 Year	31/03/2010	Nursing	Advanced/Assistant Practitioner	11	53
NW SHA (WDC)	University (Manchester)	1 Year	31/03/2010	Medical	Rotational Programme	3	84
NW SHA (WDC)	University (Manchester)	1 Year	31/03/2010	Medical	Post Graduate	-	3
NW SHA (WDC)	University (Manchester)	1 Year	31/03/2010	Medical	Training and CPD	-	3

**AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 4**

Private Health Care

# AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION TRUST

## PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 0%.

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0%<sup>1</sup>.

### DEFINITION:

Private patient income

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Total patient  
related income

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<sup>1</sup> The proportion of the total patient income derived from private health charges was nil in the base year, 2002/03. Accordingly, the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 0%.

**AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION  
TRUST**

**Schedule 5**

Limit on Borrowing

# **AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION TRUST**

## **PRUDENTIAL BORROWING LIMIT**

Pursuant to section 46 of the Act and the Prudential Borrowing Code, the Prudential Borrowing Limit for the year 2009/10 is the sum of the following:

- (i) Maximum cumulative long term borrowing (Tier 1): £15.1 million;
- and
- (ii) Approved working capital facility: not to exceed £4.0 million

# **AUTHORISATION OF CALDERSTONES PARTNERSHIP NHS FOUNDATION TRUST**

## **Schedule 6**

### **Information**

Full details of the information which the Trust shall disclose to Monitor directly and to any third parties as may be specified by the Secretary of State and as may be varied from time to time are set out on Monitor's website at [www.monitor-nhsft.gov.uk](http://www.monitor-nhsft.gov.uk).