
**CONSTITUTION OF
ROYAL BERKSHIRE NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

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1. DEFINITIONS

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the National Health Service Act 2006.
- 1.2 References in this constitution to legislation include all amendments, replacements or re-enactments made.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.5 In this constitution:
- | | |
|-----------------------------------|--|
| "the 2006 Act" | means the National Health Service Act 2006; |
| "the 2012 Act" | means the Health and Social Care Act 2012; |
| "allied healthcare professionals" | means professionals regulated by the Council for Professions Supplementary to Medicine; |
| "appointed Governors" | means those Governors appointed by the appointing organisations; |
| "appointing organisations" | means those organisations named in this constitution who are entitled to appoint Governors; |
| "authorisation" | means an authorisation given by Monitor; |
| "areas of the Trust" | means the five areas specified in Annex 1 which are (1) Reading, (2) Wokingham, (3) West Berkshire and borders, (4) East Berkshire and borders, (5) South Oxfordshire; |
| "Audit Commission" | means the Audit Commission for Local Authorities and the National Health Service in England and Wales; |
| "Board of Directors" | means the Board of Directors as constituted in accordance with this constitution; |
| "Council of Governors" | means the Council of Governors as constituted in accordance with this constitution |
| "Director" | means a member of the Board of Directors; |
| "elected Governors" | means those Governors elected by the public constituencies and the classes of the staff |

	constituency;
“Financial year”	means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April.
“Local Authority Governor”	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the area of the Trust;
“Monitor”	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
“member”	means a member of the Trust;
“Partnership Governor”	means a member of the Council of Governors appointed by a partnership organisation named in this constitution;
“public constituency”	means (collectively) those members living in one of the areas of the Trust;
“Public Governor”	means a member of the Council of Governors elected by the members of one of the public constituencies;
“registered dentist”	means a registered dentist within the meaning of the Dentists Act 1984;
“registered medical practitioner”	means a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practice under that Act;
“Secretary”	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
“staff constituency”	means (collectively) those members of the five classes comprising the staff constituency;
“Staff Governor”	means a member of the Council of Governors elected by the members of one of the classes of the staff constituency;
“the Trust”	means the Royal Berkshire NHS Foundation Trust;

2. NAME AND STATUS

The name of the Trust is to be “Royal Berkshire NHS Foundation Trust”. The Trust is a public benefit corporation authorised under the National Health Service Act 2006

PURPOSE

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

3. POWERS

- 3.1 The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 3.2 In particular it may:
 - 3.2.1 acquire and dispose of property;
 - 3.2.2 enter into contracts;
 - 3.2.3 accept gifts of property (including property to be held on trust for the purposes of the Trust or for any purposes relating to the health service);
 - 3.2.4 employ staff.
- 3.3 Any power of the Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 3.4 The Trust may borrow money for the purposes of or in connection with its functions, subject to any limit imposed by its authorisation or specified in the prudential borrowing code made by Monitor from time to time.
- 3.5 The Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:

- 3.5.1 forming, or participating in forming, bodies corporate;
- 3.5.2 otherwise acquiring membership of bodies corporate.
- 3.6 The Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

4. COMMITMENTS

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

Representative membership

- 4.2 The Trust shall at all times take steps to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:
 - 4.2.1 the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years;
 - 4.2.2 At least every three years the Council of Governors will review the public constituency boundaries and membership in light of patient flows to the Trust during those three years.
 - 4.2.3 the Council of Governors shall present to each annual general meeting:
 - 4.2.3.1 a report on steps taken to secure that taken as a whole the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
 - 4.2.3.2 the progress of the membership strategy;
 - 4.2.3.3 any changes to the membership strategy.
- 4.3 In deciding which areas are to be areas for public constituencies, or in deciding whether or not the Trust should have a patients' constituency, the Trust shall have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services

Respect for rights of people

- 4.4 In conducting its affairs, the Trust shall respect the rights of members of the community it serves, its employees and people dealing with the Trust as set out in the Charter of Fundamental Rights of the European Union.

Openness

- 4.5 In conducting its affairs, the Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

Prohibiting Distribution

- 4.6 The profits or surpluses of the Trust are not to be distributed either directly or indirectly in any way at all among members.

5. FRAMEWORK

- 5.1 The affairs of the Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this constitution. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this constitution.

Members

- 5.2 Members may attend and participate at members meetings, vote in elections to, and stand for, election for the Council of Governors, and take such other part in the affairs of the Trust as is provided in this constitution.

Council of Governors

- 5.3 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution, are:

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

5.3.2 to represent the interests of the members as a whole and the interests of the public;

5.3.3 at a General Meeting:

5.3.3.1 to appoint or remove the Chairman and the other non-executive Directors;

5.3.3.2 to approve an appointment (by the non-executive Directors) of the chief executive;

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

5.3.3.4 to appoint or remove the Trust's auditor;

5.3.3.5 to be presented with the annual accounts, any report of the auditor on them and the annual report;

5.3.4 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning;

5.3.5 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;

5.3.6 to undertake such functions as the Board of Directors shall from time to time request;

- 5.3.7 from time to time to review and make recommendations regarding the Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive Directors;
 - 5.3.8 when appropriate to make recommendations for the revision of this constitution;
 - 5.3.9 to require one or more Directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance); and
 - 5.3.10 to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to Monitor.
- 5.4 If Monitor has appointed a panel for advising governors, a Governor may refer a question to that panel as to whether the Trust has failed or is failing to act in accordance with this Constitution or Chapter 5 of the 2006 Act. A Governor may only refer a question under this paragraph if more than half of the members of the Council of Governors voting approve the referral.
- 5.5 The Trust will take steps to secure that Governors are equipped with the skills and knowledge they require in their capacity as such.

Board of Directors

- 5.6 The general duty of the Board of Directors, and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members as a whole and for the public.
- 5.7 The business of the Trust is to be managed by the Board of Directors, which shall exercise all the powers of the Trust.
- 5.8 Any of the powers of the Trust may be delegated to a committee of Directors or to an executive Director.

6. MEMBERS

- 6.1 The members are those individuals whose names are entered in the register of members. Every member is to be either a member of one of the public constituencies or a member of one of the classes of the staff constituency.
- 6.2 Subject to this constitution, membership is open to any individual who:
 - 6.2.1 is over sixteen years of age;
 - 6.2.2 is entitled under this constitution to be a member of one of the public constituencies or one of the classes of the staff constituency; and
 - 6.2.3 completes a membership application form in whatever form the Secretary specifies.

Public constituencies

- 6.3 There are five public constituencies corresponding to the five areas of the Trust specified in Annex 1. Individuals may become or continue as a member of a public constituency:
 - 6.3.1 who live in the relevant area of the Trust;
 - 6.3.2 who are not a member of another public constituency; and
 - 6.3.3 who are not eligible to be members of any of the classes of the staff constituency.
- 6.4 The minimum number of members of each of the public constituencies is to be:
 - 6.4.1 Reading - 100 members
 - 6.4.2 Wokingham – 75 members
 - 6.4.3 West Berkshire and borders– 75 members
 - 6.4.4 East Berkshire and borders– 50 members
 - 6.4.5 South Oxfordshire – 50 members

Staff constituency

- 6.5 The staff constituency is divided into six classes as follows:
 - 6.5.1 registered medical practitioners and registered dentists
 - 6.5.2 registered nurses and midwives
 - 6.5.3 allied healthcare professionals/professional and technical
 - 6.5.4 health care support workers and ancillary
 - 6.5.5 managers and administrative and clerical
 - 6.5.6 volunteers.
- 6.6 Individuals may become or continue as members of one of the classes of the staff constituency:
 - 6.6.1 who are employed under a contract of employment by the Trust and who either
 - 6.6.1.1 are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or
 - 6.6.1.2 who have been continuously employed by the Trust for at least 12 months; or
 - 6.6.2 who are not so employed but who nevertheless exercise functions for the purposes of the Trust and who have exercised the functions for

the purposes of the Trust for a continuous period of at least 12 months.

- 6.7 Chapter 1 of Part XIV of the Employment Rights Act 1996 applies in determining whether an individual has been continuously employed by the Trust for the purposes of paragraph 6.6.1.2 above or has continuously exercised functions for the purposes of the Trust for the purpose of paragraph 6.6.2 above.
- 6.8 Where there is dispute as to the particular class of the staff constituency into which an eligible member of that constituency falls the matter shall be referred to the membership sub-committee of the Council of Governors whose decision shall be final.
- 6.9 All individuals who are entitled under this constitution to become members of one of the classes of the staff constituency, and who
 - 6.9.1 have been invited by the Trust to become a member of the appropriate class, and
 - 6.9.2 have not informed the Trust that they do not wish to do so shall become members of the appropriate class.
- 6.10 A person who is eligible to be a member of one of the classes of the staff constituency may not become or continue as a member of any of the public constituencies, and may not become or continue as a member of more than one class of the staff constituency.
- 6.11 The minimum number of members of each class of the staff constituency is as follows:
 - 6.11.1 registered medical practitioners and registered dentists – 25 members
 - 6.11.2 registered nurses and midwives – 75 members
 - 6.11.3 allied healthcare professionals/professional and technical – 25 members
 - 6.11.4 healthcare support workers and ancillary – 50 members
 - 6.11.5 managers and administrative and clerical – 50 members
 - 6.11.6 volunteers – 25 members

7. TERMINATION OF MEMBERSHIP

- 7.1 A member shall cease to be a member if:
 - 7.1.1 they resign by notice to the Secretary;
 - 7.1.2 they die;
 - 7.1.3 they are expelled from membership under this constitution;

- 7.1.4 they cease to be entitled under this constitution to be a member of any of the public constituencies or of any of the classes of the staff constituency;
 - 7.1.5 if it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made by the membership sub-committee of the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Trust.
- 7.2 A member may be expelled by a resolution approved by a two-thirds majority of the Council of Governors present and voting at a General Meeting. The following procedure is to be adopted.
- 7.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
 - 7.2.2 If a complaint is made, the Council of Governors may 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:
 - 7.2.2.1 dismiss the complaint and take no further action; or
 - 7.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this Constitution;
 - 7.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
 - 7.2.3 If a resolution to expel a member is to be considered by the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
 - 7.2.4 At the meeting 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.
 - 7.2.5 If the member complained of fails to attend the meeting without reasonable cause the meeting may proceed in their absence.
 - 7.2.6 A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
 - 7.2.7 No person who has been expelled from membership is to be readmitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.
 - 7.2.8 General Meetings of the Council of Governors held to consider a resolution for expulsion of a member or readmission of an expelled member shall not be open to members of the public.

8. MEMBERS MEETINGS

- 8.1 The Trust is to hold a members meeting (called the annual general meeting) within nine months of the end of each financial year. This meeting may be combined with the meeting of the Council of Governors referred to in paragraph 5.3.3.5, at which the Council of Governors is presented with the annual accounts, any report of the auditor on them and the annual report.
- 8.2 All members meetings other than annual meetings are called special members meetings.
- 8.3 Members meetings are open to all members, Governors and Directors, representatives of the auditor, and members of the public unless the Council of Governors decides otherwise. 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.
- 8.4 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 8.5 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members:
 - 8.5.1 arrange for the annual general meeting to be held in different venues each year:
 - 8.5.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision 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.
- 8.6 At the annual general meeting:
 - 8.6.1 at least one Director shall present to the members:
 - 8.6.1.1 the annual accounts
 - 8.6.1.2 any report of the auditor on them
 - 8.6.1.3 any report of any other auditor of the Trust's affairs
 - 8.6.1.4 forward planning information for the next financial year; and
 - 8.6.1.5 the annual report
 - 8.6.2 the Council of Governors shall present to the members:
 - 8.6.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
 - 8.6.2.2 the progress of the membership strategy

- 8.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
- 8.6.3 the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 8.6.4 Where an amendment has been made to this Constitution in relation to the powers or duties of the Council of Governors, at least one Governor shall attend the next annual general meeting to be held, at which the Governor shall present the amendment and the members shall be entitled to vote on whether they approve the amendment.
- 8.6.5 If more than half the members voting approve the amendment, the amendment shall continue to have effect; otherwise it shall cease to have effect and the Trust shall take such steps as are necessary as a result.
- 8.7 Notice of a members meeting is to be given:
 - 8.7.1 by notice to all members;
 - 8.7.2 by notice prominently displayed at the head office and at all of the Trust's places of business; and
 - 8.7.3 by notice on the Trust's website
 at least 14 clear days before the date of the meeting. The notice must:
 - 8.7.4 be given to the Council of Governors and the Board of Directors, and to the auditor;
 - 8.7.5 state whether the meeting is an annual or special members meeting;
 - 8.7.6 give the time, date and place of the meeting; and
 - 8.7.7 indicate the business to be dealt with at the meeting.
- 8.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Trust's constituencies.
- 8.9 The Trust may make arrangements for members to vote by post, or by using electronic communications.
- 8.10 It is the responsibility of the Council of Governors, the Chairman of the meeting and the Secretary to ensure that at any members meeting:
 - 8.10.1 the issues to be decided are clearly explained;
 - 8.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 8.11 The Chair of the Trust, or in their absence the Lead Governor of the Council of Governors, shall act as chairman at all members meetings of the Trust. If neither the Chairman nor the Lead Governor of the Council of Governors is present, the members of the Council of Governors present shall elect one of

their number to be Chairman and if there is only one Governor present and willing to act they shall be Chairman.

- 8.12 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.
- 8.13 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 8.14 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 Chairman of the meeting is to have a second or casting vote.
- 8.15 The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

9. COUNCIL OF GOVERNORS

- 9.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, Local Authority Governors and Partnership Governors.
- 9.2 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.
- 9.3 The Trust is to have a Code of Conduct for the Council of Governors which all Governors will be required to sign a declaration stating their commit to abide by the Code.
- 9.4 The Council of Governors shall seek to ensure, subject to the requirements of the 2006 Act, that the composition of the Council of Governors meets the following objectives:
 - 9.4.1 the interests of the community served by the Trust are appropriately represented;
 - 9.4.2 the level of representation of the public constituencies, the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs;and to this end, the Council of Governors:
 - 9.4.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy; and
 - 9.4.4 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors; and
 - 9.4.5 when appropriate shall propose amendments to this constitution.

- 9.5 The Council of Governors of the Trust is to comprise:
- 9.5.1 fifteen Public Governors, from the following public constituencies:
 - 9.5.1.1 Reading –five Public Governors;
 - 9.5.1.2 Wokingham – four Public Governors;
 - 9.5.1.3 West Berkshire and borders – three Public Governors;
 - 9.5.1.4 East Berkshire and borders – two Public Governors
 - 9.5.1.5 South Oxfordshire – one Public Governor;
 - 9.5.2 six Staff Governors from the following classes:
 - 9.5.2.1 registered medical practitioners and registered dentists. – one Staff Governor;
 - 9.5.2.2 registered nurses and midwives – one Staff Governor;
 - 9.5.2.3 allied healthcare professionals / professional and technical – one Staff Governor;
 - 9.5.2.4 healthcare support workers and ancillary – one Staff Governor;
 - 9.5.2.5 managers and administrative and clerical – one Staff Governor;
 - 9.5.2.6 volunteers – one Staff Governor;
 - 9.5.3 three Local Authority Governors, to be appointed one each by Reading Borough Council, Wokingham Borough Council and West Berkshire Council;
 - 9.5.4 five Partnership Governors appointed by partnership organisations.
- 9.6 The partnership organisations that may appoint a Partnership Governor are
- 9.6.1 The federation of Clinical Commissioning Groups representing East Berkshire (one Partnership Governor)
 - 9.6.2 The Clinical Commissioning Group representing West Berkshire (one Partnership Governor)
 - 9.6.3 Berkshire Carers Service (one Partnership Governor)
 - 9.6.4 Alliance for Cohesion and Racial Equality (ACRE) (one Partnership Governor)
 - 9.6.5 One Partnership Governor appointed by either the University of Reading or University of West London.

Elected Governors

- 9.7 Public Governors are to be elected by the members of their public constituencies, and Staff Governors are to be elected by the members of their class of the staff constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this constitution.
- 9.8 If contested, the elections must be by secret ballot.
- 9.9 Elections shall be carried out in accordance with the model election rules 2014 set out in Annex 2 using the first past the post system.
- 9.10 A member of a public constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Council of Governors that they are qualified to vote as a member of the relevant constituency. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

Local Authority Governors

- 9.11 The Secretary, having consulted Reading Borough Council, Wokingham Borough Council and West Berkshire Council is to adopt a process for agreeing the appointment of Local Authority Governors with those local authorities.

Partnership Governors

- 9.12 The Partnership Governors are to be appointed by the partnership organisations in accordance with a process agreed with the Secretary.

Appointment of a Lead Governor of the Council of Governors

- 9.13 The Council of Governors shall appoint one of the Public Governors to be Lead Governor of the Council of Governors.

Terms of office for Governors

- 9.14 Elected Governors:
- 9.14.1 shall hold office for a period of three years commencing immediately after the annual general meeting at which their election is announced;
- 9.14.2 are eligible for re-election at the end of that period;
- 9.14.3 may not hold office for more than six consecutive years and shall not be eligible for re-election if they have already held office for more than three consecutive years.
- 9.15 Appointed Governors:

- 9.15.1 shall hold office for a period of three years commencing immediately after the annual general meeting at which their appointment is announced;
- 9.15.2 are eligible for re-appointment at the end of that period;
- 9.15.3 may not hold office for longer than six consecutive years and shall not be eligible for re-election if they have already held office for more than three consecutive years.
- 9.16 For the purposes of these provisions concerning terms of office for Governors, "year" means a period commencing immediately after the conclusion of the annual general meeting, and ending at the conclusion of the next annual general meeting.

Eligibility to be a Governor

- 9.17 A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
- 9.17.1 they are a Director of the Trust, or a governor or director of a health service body (unless they are appointed by an appointing organisation which is a health service body);
- 9.17.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 9.17.3 they are under sixteen years of age;
- 9.17.4 being a member of one of the public constituencies, they refuse to sign a declaration in the form specified by the Council of Governors 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.
- 9.17.5 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 9.17.6 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
- 9.17.7 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
- 9.17.8 they are the subject of a sex offender order;
- 9.17.9 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 9.17.10 they are a person whose tenure of office as the Chairman or as a member or director of a health service body has been terminated

on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

- 9.17.11 they have had their name removed, from a relevant list of medical practitioners pursuant to Paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had his name included in such a list.

Termination of office and removal of Governors

- 9.18 A person holding office as a Governor shall immediately cease to do so if
- 9.18.1 they resign by notice in writing to the Secretary;
- 9.18.2 in such a period as the other Governors consider reasonable. they fail to attend two meetings in any Financial Year, unless the other Governors are satisfied that:
- 9.18.2.1 the absences were due to reasonable causes; and
- 9.18.2.2 they will be able to start attending meetings of the Trust again within such a period as the other Governors consider reasonable
- 9.18.3 in the case of an elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected;
- 9.18.4 in the case of an appointed Governor, the appointing organisation terminates the appointment;
- 9.18.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
- 9.18.6 they have failed without reasonable cause to sign and deliver to the Secretary a statement in the form required by the Council of Governors confirming acceptance of the code of conduct for Governors;
- 9.18.7 they are removed from the Council of Governors under the following provisions.
- 9.19 A Governor may be removed from the Council of Governors by a resolution approved by not less than three quarters of the remaining Governors present and voting on the grounds that:
- 9.19.1 they have committed a serious breach of the code of conduct, or
- 9.19.2 they have acted in a manner detrimental to the interests of the Trust, and

9.19.3 the Council of Governors considers that it is not in the best interests of the Trust for them to continue as a Governor.

Vacancies amongst Governors

- 9.20 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 9.21 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.
- 9.22 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
- 9.22.1 to call an election within three months to fill the seat for the remainder of that term of office, or
 - 9.22.2 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 annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office.

Expenses and remuneration of Governors

- 9.23 The Trust may reimburse Governors for travelling and other costs and expenses at such rates as the executive remuneration committee of the non-executive Directors decides. These are to be disclosed in the annual report.
- 9.24 Governors are not to receive remuneration.

Meetings of the Council of Governors

- 9.25 The Council of Governors is to meet at least three 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 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.
- 9.26 Meetings of the Council of Governors may be called by the Secretary, or by the Chairman, or by ten Governors (including not less than five Public 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. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or the ten Governors, whichever is the case, shall call such a meeting.
- 9.27 Save as stated otherwise in this constitution all meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the

Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

- 9.28 Ten Governors including not less than five Public Governors, shall form a quorum.
- 9.29 The Chairman of the Trust or, in their absence, the Deputy Chairman of the Board of Directors, or in their absence one of the other non-executive Directors shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors will chair that part of the meeting.
- 9.30 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.
- 9.31 The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 9.32 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.
- 9.32.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.
- 9.32.2 No resolution of the Council of Governors shall be passed if it is unanimously opposed by all of the Public Governors present. This provision shall only apply if there are ten or more Public Governors present.
- 9.33 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions.
- 9.34 The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out their functions.
- 9.35 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.

Disclosure of interests

- 9.36 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
- 9.36.1 shall not be present except with the permission of the Council of Governors during any discussion of the matter, and

- 9.36.2 shall not vote on any issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 9.37 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.
- 9.38 Subject to the exceptions below, a material interest is
- 9.38.1 any directorship of a company;
 - 9.38.2 any interest held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
 - 9.38.3 any interest in an organisation providing health and social care services to the National Health Service;
 - 9.38.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 9.38.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 9.39 The exceptions which shall not be treated as material interests are as follows:
- 9.39.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 9.39.2 an employment contract held by a Staff Governor;
 - 9.39.3 a contract with their PCT held by a PCT Governor;
 - 9.39.4 an employment contract with a local authority held by a Local Authority Governor;
 - 9.39.5 an employment contract with a partnership organisation, held by a Partnership Governor.
- 9.40 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

Declaration

- 9.41 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 Council of Governors 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.

10. BOARD OF DIRECTORS

- 10.1 The Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors.
- 10.2 The board is to include:
- 10.2.1 the following non-executive Directors:
- 10.2.1.1 a Chairman, who is to be appointed (and removed) by the Council of Governors at a General Meeting;
- 10.2.1.2 up to seven other non-executive Directors who are to be appointed (and removed) by the Council of Governors at a General Meeting
- in each case subject to the approval of a majority of the Council of Governors (in the case of an appointment) present and voting at the meeting, and a three-quarters majority of all of the members of the Council of Governors (in the case of a removal) voting at the meeting;
- 10.2.2 the following executive Directors:
- 10.2.2.1 a Chief Executive (who is the accountable officer), who is to be appointed (and removed) by the non-executive Directors, and whose appointment is subject to the approval of a majority of the members of the Council of Governors present and voting at a General Meeting;
- 10.2.2.2 a Finance Director, a registered medical practitioner or a registered dentist, a registered nurse or registered midwife, and up to three other executive Directors, all of whom are to be appointed (and removed) by a committee comprising the Chairman, the Chief Executive and the other non-executive Directors.
- 10.3 Only a member of a public constituency is eligible for appointment as a non-executive Director.
- 10.4 The Board of Directors shall elect one of the non-executive Directors to be Deputy Chairman of the Board of Directors. If the Chairman is unable to discharge their office as Chairman of the Trust, the Deputy Chairman of the Board of Directors shall be acting Chairman of the Trust.
- 10.5 Non-executive Directors are to be appointed by the Council of Governors using the following procedure.
- 10.5.1 The Council of Governors will maintain a policy for the composition of the 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.
- 10.5.2 The Chairman (or in the case of the appointment of the Chairman, the Deputy Chairman), or Lead Governor of the Council of Governors, two Governors, the Chief Executive will work with an independent advisor to identify the skills and experience required for non-executive Directors.

10.5.3 Appropriate candidates will be identified by a nominations committee which will include the Chairman (or the Deputy Chairman (unless they are standing for appointment, in which case another non-executive Director, when a Chairman is being appointed) and at least one elected Governor and one appointed Governor. The nominations committee will take account of the policy maintained by the Council of Governors and the skills and experience required. The Chief Executive will be entitled to attend meetings of the Nominations Committee unless the Committee decides otherwise and the Committee shall take into account the Chief Executive's views.

Terms of Office

- 10.6 The Chairman and the non-executive Directors are to be appointed for a period of office of three-years in accordance with the terms and conditions of office, including remuneration and allowances, decided by the Council of Governors at a General Meeting. Any re-appointment of a non-executive Director shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved. At the end of the first period of three years a non-executive Director may be appointed for a further period of three years. If a non-executive Director has held office for more than three years, any further appointment shall be for a term of one year.
- 10.7 The executive remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

Disqualification

- 10.8 A person may not become or continue as a Director of the Trust if:
- 10.8.1 they are a member of the Council of Governors;
 - 10.8.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 10.8.3 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - 10.8.4 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
 - 10.8.5 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
 - 10.8.6 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 10.8.7 in the case of a non-executive Director, they are no longer a member of a public constituency;

- 10.8.8 they are a person whose tenure of office as a Chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- 10.8.9 they have had their name removed, from a relevant list of medical practitioners pursuant to Paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had his name included in such a list;
- 10.8.10 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 10.8.11 in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 10.8.12 they have failed without reasonable cause 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.

Committees and delegation

- 10.9 The Board of Directors may delegate any of its powers to a committee of Directors or to an executive Director.
- 10.10 The Board of Directors shall appoint a committee of non-executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- 10.11 The Board of Directors shall appoint an executive remuneration committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors.

Meetings of Directors

- 10.12 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
- 10.13 Before holding a meeting, the Board of Directors will send a copy of the agenda to the Council of Governors.
- 10.14 Save as stated otherwise in this constitution all meetings of the Board of Directors are to be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any members of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.

- 10.15 Meetings of the Board of Directors are called by the Secretary, or by the Chairman, or by four 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. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.
- 10.16 Four Directors including not less than two executive Directors, and not less than two non-executive Directors shall form a quorum.
- 10.17 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 10.18 The Chairman of the Trust or, in their absence, the Deputy Chairman of the Board of Directors, and in their absence one of the other non-executive Directors in attendance is to chair meetings of the Board of Directors.
- 10.19 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
- 10.19.1 In case of an equality of votes the Chairman shall have a second and casting vote.
- 10.19.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the executive Directors present or by all of the non-executive Directors present.
- 10.20 As soon as practicable after holding a meeting, the Board of Directors shall send a copy of the minutes of the meeting to the Council of Governors.
- 10.21 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

Conflicts of Interest of Directors

10.22

- 10.22.1 Each Director has duty to avoid a situation in which the Director has or can have a direct or indirect interest that conflicts or possibly may conflict with the interests of the Trust. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter has been authorised in accordance with this Constitution.
- 10.22.2 Each Director has a duty not to accept a benefit from a third party by reason of being a Director or doing or not doing anything in that capacity. This duty is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

- 10.22.3 If a Director is aware that he has in anyway a direct interest in a proposed transaction or arrangement with the Trust, he shall disclose the nature and extent of that interest to the other Directors as soon as he is aware of it and in all cases, before the Trust enters into the transaction or arrangement. If any declaration proves to be or becomes inaccurate or incomplete, the Director shall make a further declaration.
- 10.22.4 A Director need not declare an interest:
- 10.22.4.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 10.22.4.2 if, or to the extent that, the Directors are already aware of it;
- 10.22.4.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- 10.22.4.3.1 by a meeting of the Board of Directors; or
- 10.22.4.3.2 by a committee of the Directors appointed for that purpose under the Constitution.
- 10.23 Any Director who has declared an interest to the Board of Directors:
- 10.23.1 shall not be present except with the permission of the Board of Directors during any discussion of the matter, and
- 10.23.2 shall not vote on any issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 10.24 Any Director 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 Directors and (in the case of a non-executive Director) by the requisite majority of the Council of Governors.
- 10.25 The following shall always be treated as a relevant interest:
- 10.25.1 any directorship of a company;
- 10.25.2 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) held by a Director in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
- 10.25.3 any interest in an organisation providing health and social care services to the National Health Service;

- 10.25.4 a position of authority in a charity or voluntary organisation in the field of health and social care. any affiliation to a special interest group campaigning on health or social care issues;
- 10.25.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.

Expenses

- 10.26 The Trust may reimburse Directors for travelling and other costs and expenses incurred in carrying out their duties at such rates as the executive remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.
- 10.27 The remuneration and allowances for Directors are to be disclosed in the annual report.

11. SECRETARY

- 11.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
 - 11.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 11.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 11.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
 - 11.1.4 having charge of the Trust's seal;
 - 11.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
 - 11.1.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made.
- 11.2 Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 11.3 The Secretary is to be appointed and removed by a nominations committee which will include the Chairman, the Chief Executive and the other non-executive Directors, subject to the approval of the Council of Governors.

12. REGISTERS

- 12.1 The Trust is to have:

- 12.1.1 a register of Members showing, in respect of each member:
 - 12.1.1.1 the constituency to which they belong; and
 - 12.1.1.2 where there are classes of the constituency, the class to which they belong;
- 12.1.2 a register of members of the Council of Governors;
- 12.1.3 a register of Directors;
- 12.1.4 a register of interests of members of the Council of Governors;
- 12.1.5 a register of interests of the Directors.
- 12.2 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.
- 12.3 The Secretary is to send to Monitor a list of persons who were first elected or appointed as Governors or Directors.

13. PUBLIC DOCUMENTS

- 13.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times, and shall be available on the Trust's website:
 - 13.1.1 a copy of the current constitution;
 - 13.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
 - 13.1.3 a copy of the report of any other auditors appointed by the Council of Governors to review and publish a report on any other aspect of the Trust's affairs;
 - 13.1.4 a copy of the latest annual report;
 - 13.1.5 a copy of the latest information as to its forward planning;
 - 13.1.6 a copy of the Trust's membership development strategy;
 - 13.1.7 a copy of the Trust's policy for the composition of the Council of Governors and the non-executive Directors;
 - 13.1.8 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
 - 13.1.8.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

- 13.1.8.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 13.1.8.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 13.1.8.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 13.1.8.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 13.1.8.6 a copy of any notice published under section 65D (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitors decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 13.1.8.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 13.1.8.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
 - 13.1.8.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 13.1.8.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 13.2 The registers shall be made available for inspection by members of the public, except in circumstances prescribed by the Public Benefit Corporation (Register of Member) Regulations 2004 (S.I. 2004 No. 539); and so far as they are required to be available they are to be available free of charge at all reasonable times.
- 13.3 Any person who requests it is to be provided with a copy or extract from any of the above documents or registers. The Trust may impose a reasonable charge for providing the copy or extract, but a member is entitled to a copy or extract from the documents or registers free of charge.

14. AUDITORS

- 14.1 The Trust is to have an auditor
- 14.2 An officer of the Audit Commission may be appointed as the auditor with the agreement of the Audit Commission.
- 14.3 The Council of Governors at a General Meeting shall appoint or remove the Trust's auditor.

- 14.4 The Board of Directors may resolve that other auditors be appointed to review and publish a report on any other aspect of the Trust's performance. Any such auditors are to be appointed by the Council of Governors.

15. ACCOUNTS

- 15.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 15.2 Monitor may, with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 15.3 The accounts are to be audited by the Trust's auditor.
- 15.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
- 15.4.1 the accounts;
 - 15.4.2 the records relating to them; and
 - 15.4.3 any report of the auditor on them.
- 15.5 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 15.6 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 15.7 In preparing its annual accounts, the Trust is to comply with any directions given by Monitor with the approval of the Secretary of State as to:
- 15.7.1 the methods and principles according to which the accounts are to be prepared;
 - 15.7.2 the content and form of the accounts;
- 15.8 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 General Meeting.
- 15.9 The Trust must:
- 15.9.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
 - 15.9.2 send copies of those documents to Monitor within such period as Monitor may direct.
- 15.10 The Chief Executive as accounting officer is responsible for the preparation of the annual accounts, for laying before Parliament a copy of the annual accounts and any report of the auditor on them, and for sending copies of such documents to Monitor.

16. ANNUAL REPORTS AND FORWARD PLANS

- 16.1 The Trust is to prepare annual reports and send them to Monitor.

- 16.2 The reports are to give:
- 16.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the public constituencies and the classes of the staff constituency is representative of those eligible for such membership; and
 - 16.2.2 information on the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes;
 - 16.2.3 information on any exercise by the Council of Governors of its power to require a Director to attend a meeting;
 - 16.2.4 information on the Trust's policy on pay, on the work of the committee of non-executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors and on such other procedures as the Trust has on pay;
 - 16.2.5 information on the remuneration of the Directors and on the expenses of the Governors and the Directors; and
 - 16.2.6 any other information Monitor requires.
- 16.3 The Trust is to comply with any decision Monitor makes as to:
- 16.3.1 the form of the reports;
 - 16.3.2 when the reports are to be sent to him;
 - 16.3.3 the periods to which the reports are to relate.
- 16.4 The Trust is to give information as to its forward planning in respect of each financial year to Monitor. The document containing this information is to be prepared by the Directors, and in preparing the document, the Board of Directors must have regard to the views of the Council of Governors.
- 16.5 Each forward plan must include information about –
- 17.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
 - 17.5.2 the income it expects to receive from doing so.
- 16.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 17.5.1 the Council of Governors must
- 16.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
 - 16.6.2 notify the Directors of the Trust of its determination.

- 16.7 Until the Council of Governors has notified the Directors that it has made a determination in accordance with paragraph 16.6.1 that it is satisfied that the carrying on of the proposed activity will not to any significant extent interfere with the fulfilment of its other functions, the Trust shall not implement the proposal.
- 16.8 Where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England the Trust may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

17. Significant Transactions

- 17.1 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 17.2 "Significant Transaction" means:
- 17.2.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 10% of the value of the Trust's gross assets before the acquisition; or
 - 17.2.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 10% of the value of the Trust's gross assets before the disposition; or
 - 17.2.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 10% of the value of the Trust's gross assets before the transaction.
- 17.3 For the purpose of this paragraph 18:
- 17.3.1 "gross assets" means the total of fixed assets and current assets;
 - 17.3.2 in assessing the value of any contingent liability for the purposes of sub-paragraph 18.2.3, the Directors:
 - 17.3.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
 - 17.3.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and
 - 17.3.2.3 may take account of the likelihood of the contingency occurring.

18. INDEMNITY

Members of the Council of Governors and the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their 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 any such liability for its own benefit and the benefit of members of the Council of Governors and the Board of Directors and the Secretary.

19. EXECUTION OF DOCUMENTS

- 19.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 19.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

20. DISPUTE RESOLUTION PROCEDURES

- 20.1 Any dispute touching and concerning membership of a constituency, the right to membership of the Trust or the conduct of individual Governors shall be referred to membership sub-committee of the Council of Governors for resolution.
- 20.1.1 The membership sub committee will be chaired by the Lead Governor and comprise 5 other Governors at least two of whom must be from the public constituencies and one from the staff constituency.
- 20.1.2 The committee will be advised by the Secretary to the Trust.
- 20.1.3 If the membership sub-committee is unable to resolve the dispute the matter shall be referred to an Appeals Panel comprising no less than two Non-Executive Directors, a Governor of the relevant constituency and the Chief Executive whose decision shall be final.
- 20.2 Subject to the above paragraph, every unresolved dispute which arises out of this constitution between the Trust and:
- 20.2.1 a member; or
- 20.2.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
- 20.2.3 any person bringing a claim under this constitution; or
- 20.2.4 an office-holder of the Trust
- is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Health Authority. The arbitrator's decision will be binding and conclusive on all parties.
- 20.3 Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £250) to be determined by the Board of Governors and approved by the Secretary. The arbitrator will decide how

the costs of the arbitration will be paid and what should be done with the deposit.

21. AMENDMENT OF THE CONSTITUTION

The Trust may make amendments to this Constitution only if:

21.1.1 more than half of the members of the Council of Governors voting;
and

21.1.2 more than half of the members of the Board of Directors voting;

approve the amendments.

21.2 Amendments take effect as soon as the conditions in paragraph 22.1 are satisfied, but an amendment shall have no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

21.3 The Trust shall inform Monitor of amendments to the Constitution.

21.4 If an amendment relates to the powers or duties of the Council of Governors, paragraphs 9.6.4 and 9.6.5 of the Constitution shall apply.

22. MERGER, ACQUISITION, SEPARATION AND DISSOLUTION OF THE TRUST

22.1 More than half of the members of the Council of Governors must approve any application for any of the following before the application is made to Monitor:

22.1.1 the dissolution of the Trust and another NHS Foundation trust and the establishment of the new NHS foundation trust;

22.1.2 the acquisition by the Trust of another NHS foundation trust;

22.1.3 the acquisition of the Trust by another NHS foundation trust;

22.1.4 the dissolution of the Trust and the establishment of two or more new NHS foundation trusts; or

22.1.5 the dissolution of the Trust.

23. HEAD OFFICE AND WEBSITE

23.1 The Trust's head office is at Royal Berkshire Hospital, London Road, Reading RG1 5AN

23.2 The Trust will maintain a website: www.rbbh.nhs.uk

23.3 The Trust will display its name on the outside of its head office and every other place at which it carries on business, and on its business letters, notices, advertisements, other publications.

24. NOTICES

24.1 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.

- 24.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

ANNEX 1

AREAS OF THE TRUST

1. READING

All the electoral wards in Reading Borough Council (unitary authority) area

2. WOKINGHAM

All the electoral wards in Wokingham District Council (unitary authority) area

3. WEST BERKSHIRE AND BORDERS

(a) all the electoral wards in West Berkshire District Council

(b) The following electoral wards from Basingstoke and Deane Borough Council area of north Hampshire

- Baughurst
- Burghclere
- Calleva
- East Woodhay
- Highclere and Bourne
- Kingsclere
- Pamber
- Tadley North
- Tadley South

(c) The following electoral ward from the Test Valley Borough Council area of north Hampshire

- Bourne Valley

4. EAST BERKSHIRE AND BORDERS

(a) All the electoral wards in Bracknell Forest Borough Council (unitary authority)

(b) All the electoral wards in Slough Borough Council (unitary authority)

(c) All the electoral wards in the Royal Borough of Windsor and Maidenhead (unitary authority)

(d) The following electoral wards from South Buckinghamshire District Council:

- Burnham Beaches
- Burnham Church
- Burnham Lent Rise
- Dorney and Burnham South

- Farnham Royal
- Iver Heath
- Iver Village and Rickings Park
- Stoke Pogies
- Taplow
- Wexham and Iver West

5. SOUTH OXFORDSHIRE

The following electoral wards from South Oxfordshire District Council:

- Chiltern Woods
- Cholsey and Wallingford South
- Crowmarsh
- Didcot All Saints
- Didcot Ladygrove
- Didcot Northbourne
- Didcot Park
- Goring
- Hagbourne
- Henley North
- Henley South
- Shiplake
- Sonning Common
- Wallingford North
- Woodcote

ANNEX 2
ELECTION RULES