Western Sussex Hospitals NHS Foundation Trust

Board of Directors Meeting

2.30pm to 3.30pm on 9 July 2013

Mickerson Hall, Chichester Medical Education Centre, St.Richard’s Hospital, Spitalfield Lane, Chichester, West Sussex, PO19 6SE

AGENDA – MEETING IN PUBLIC

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The next meeting of the Board is scheduled to take place at 10.00am on Thursday, 1 August 2013 in the Bateman Room, Chichester Medical Education Centre, St.Richard’s Hospital, Spitalfield Lane, Chichester, West Sussex, PO19 6SE
Graham Lawrence
Company Secretary

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To: Board of Directors  
From: Graham Lawrence, Company Secretary

Date: 9 July 2013  
Agenda Item: 3

FOR INFORMATION

WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST CONSTITUTION

1.00 INTRODUCTION

1.01 This paper briefs the Board of Directors on the principal points from the Foundation Trust Constitution, which came into formal effect when the organisation was licensed by Monitor as a Foundation Trust. The Constitution has been approved by the Board and by Monitor. (It is a requirement of the FT application process that Monitor must approve the Constitution. Following licensing it is for the Board and, for some aspects of the documents, the Council and the members to approve any amendments.)

2.00 PURPOSE OF CONSTITUTION

2.01 The principal legislation which governs the NHS, ie. the Health Act 2006 and the Health & Social Care Act 2012, provides the basis for the formation of NHS Foundation Trusts. The Acts define the legal form of FTs (they are called statutory corporations), and their governance arrangements. The Acts require that each FT must have a constitution, to include as a minimum certain arrangements, rules and procedures which are derived from the legislation.

2.02 The Constitution is the document which sets out the purpose and powers of the FT, and defines its governance arrangements. The Constitution establishes the Board of Directors (the Board) and the Council of Governors, and defines the basis for the membership. The document comprises a "Model Core" and a number of Annexes. The Annexes define the detailed arrangements and procedures for appointing the Board, appointing and electing the Council, and managing their meetings.

3.00 FORMAT AND STRUCTURE OF CONSTITUTION

3.01 The Model Core document is based on a template published by Monitor. The template is designed to include all the rules and other points from the legislation described above, but also reflects Monitor's recommendations for good practice in FT governance. Monitor encourages FTs to depart from the template only where it is absolutely necessary, and this is the case with the Constitution for Western Sussex Hospitals.

3.02 The majority of the Annexes were produced by the Trust during its application for FT status. There is no model but there is recommended good practice from which to draft the documents, based on experience in FTs which have been authorised. The exception is Annex 5, the election rules, which are prescribed by the Department of Health and must be adopted by the Trust in that form.
4.00 PRINCIPAL POINTS FROM THE CONSTITUTION

Defining the purpose of the Foundation Trust

4.01 It is normal for a constitution in a corporate body to define the purpose of the organisation, and to define the principal powers through which the organisation fulfills its purpose. The Model Core Constitution states (in section 3) that “The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England”. The Constitution states that the powers of the Trust are defined in the 2006 Act and it defines the Board as being responsible for exercising all the powers of the Trust. (In practice, and as permitted by paragraph 4.3 of the Constitution, the Board exercises these powers through delegation to the Chief Executive and the Executive Directors, who are responsible for, and are accountable to the Board for, the management of the organisation.)

Board of Directors

4.02 The Constitution establishes the Board of Directors as the body responsible for directing and controlling the performance of the organisation, for deciding and implementing its strategy, and for compliance with all legal, regulatory and policy requirements.

4.03 The Constitution establishes the Board as comprising the Chairman, six Non-executive Directors, the Chief Executive and five Executive Directors. The five must include the Chief Executive, Medical Director, Director of Nursing and the Finance Director. In accordance with legislation, the Chairman and Non-executive Directors are appointed by (and may be removed by) the Council of Governors. The Chairman and Non-executive Directors appoint (and may remove) the Chief Executive and Executive Directors.

Council of Governors

4.04 The Constitution puts into practical effect the legal requirement for the FT to establish a Council of Governors, to comprise some Governors elected by public, patient and staff members in each of the membership constituencies, and some appointed by partner organisations. The law requires that the Council must include at least one Appointed Governor from a relevant local authority. The law also requires that the number of public and patient Governors (taken together) is more than half of the total number of Governors.

4.05 The composition of the Council for Western Sussex Hospitals is set out below:

Elected Governors (22):

- Public: Adur (2), Arun (4), Chichester (3), Worthing (3), Horsham (1)
- Patient: 3
- Staff: Medical & Dental (1), Nursing & Midwifery (1), Scientific Professional & Technical (1), Additional Clinical Services (1), Admin & Clerical (1), Estates and Ancillary (1)

Appointed Governors (8):

West Sussex County Council (1), Chichester District Council (1), Worthing Borough Council (1), Coastal West Sussex Clinical Commissioning Group (1), Brighton & Sussex Medical School (1), University of Brighton School of Nursing (1), Healthwatch West Sussex (1), Friends (of the Trust’s hospitals) (1)
Membership

4.06 The Constitution establishes the membership constituencies which form part of the FT’s governance structure - the other two parts are the Board and the Council - and provides the basis (the electorate) for the Council of Governors. The Constitution defines the process for membership application and the criteria for membership of the organisation. This is principally within the Model Core but also in Annex 9.

Lead Governor

4.07 The Constitution states that the Council will have a Lead Governor. It is normal practice for an FT to have this role, the main responsibility of which is to act as a point of contact and co-ordination between the Board (in practice, the Chairman) and the Council. This assists with planning Council meetings and dealing with issues which the Council needs to be consulted about outside formal meetings. In certain exceptional circumstances, the Lead Governor is also required to act as a point of contact with Monitor.

Appointment of the Chairman and Non-executive Directors

4.08 The Council is responsible for recruiting, selecting and appointing the Chairman and Non-executive Directors. The Council also decides their pay and other conditions of appointments. The Constitution states that the Council will do so by forming a Nominations & Remuneration Committee, which will make recommendations to the whole Council whenever an appointment is required. This is addressed later on the agenda for the meeting.

5.00 COMPLIANCE ARRANGEMENTS

5.01 It is important that the organisation is compliant with the constitution (and also with Monitor’s Code of Governance and other regulatory requirements). The Company Secretary has responsibility for advising the Chairman, Chief Executive, Board and Council to ensure that practice and procedures are compliant with the Constitution. Legal advice will be obtained whenever necessary.

6.00 RECOMMENDATION

6.01 The Board of Directors is asked to note the attached FT Constitution.
AUTHORISATION

of

WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

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

Signature

1 July 2013
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Authorisation

1. Monitor, in exercise of the powers conferred by section 35 of the National Health Service 2006, and all other powers exercisable by Monitor, hereby authorises Western Sussex Hospitals NHS Trust to become an NHS Foundation Trust.

2. This Authorisation shall come into force on 1 July 2013.

3. This Authorisation is not assignable.
AUTHORISATION

of

WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

Schedule

The Constitution (and Annexures)
NHS Foundation Trust

Western Sussex Hospitals NHS Foundation Trust
NHS Foundation Trust

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ANNEX 7 – STANDING ORDERS – BOARD OF GOVERNORS
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ANNEX 9 – FURTHER PROVISIONS
1. **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 as amended by the Health & Social Care Act 2012.

   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 2012 Act** is the Health and Social Care Act 2012.

   **Annual Members Meeting** is defined in paragraph 13 of the constitution

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

   **Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.

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

2. **Name**

   The name of the foundation trust is **Western Sussex Hospitals NHS Foundation Trust** (the trust).

3. **Principal purpose**

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

   3.2 The trust does not fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

   3.3 The trust may provide goods and services for any purposes related to—

      3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
      3.3.2 the promotion and protection of public health.

   3.4 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.
4. **Powers**

4.1 The powers of the trust are set out in the 2006 Act.

4.2 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

5. **Membership and constituencies**

The trust shall have members, each of whom shall be a member of one of the following constituencies:

5.1 a public constituency

5.2 a staff constituency and

5.3 a patients' constituency

6. **Application for membership**

An individual who is eligible to become a member of the trust may do so on application to the trust.

7. **Public Constituency**

7.1 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.

7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.

7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.
8. Staff Constituency

8.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

8.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the 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 12 months.

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

8.4 The Staff Constituency shall be divided into six descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

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

Automatic membership by default – staff

8.6 An individual who is:

8.6.1 eligible to become a member of the Staff Constituency, and

8.6.2 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.
9. **Patients' Constituency**

9.1 An individual who has, within the period specified below, attended any of the trust’s hospitals as either a patient or as the carer of a patient may become a member of the trust.

9.2 The period referred to above shall be the period from 1 January 2008.

9.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Patients’ Constituency.

9.4 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patient Constituency.

9.5 The minimum number of members in the Patients’ Constituency is specified in Annex 3.

10. **Restriction on membership**

10.1 An individual who is a member of a constituency, or of an area or class within a constituency, may not while membership of that constituency, area or class continues, be a member of any other constituency, area or class.

10.2 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.

10.3 An individual must be at least 16 years old to become a member of the trust.

10.4 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 – Further Provisions.

11. **Annual Members' Meeting**

11.1 The trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
12. **Council of Governors – composition**

12.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

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

12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are areas or classes within a constituency, by their 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.

13. **Council of Governors – election of governors**

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

13.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust’s Authorisation are attached at Annex 5.

13.3 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 41 of the constitution (amendment of the constitution).

13.4 An election, if contested, shall be by secret ballot.

14. **Council of Governors - tenure**

14.1 Subject to the provisions of Annex 6, an elected governor may hold office for a period of up to 3 years and at the end of his term he shall be eligible for re-election for one further term of up to 3 years.

14.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency, area or class by which he was elected.

14.3 An appointed governor may hold office for a period of up to 3 years and at the end of his term he shall be eligible for re-appointment for one further term of up to 3 years.

14.4 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
15. **Council of Governors – disqualification and removal**

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

15.2 The following may not become or continue as a member of the Council of Governors:

   15.2.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

   15.2.2 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;

   15.2.3 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.

15.3 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.

15.4 Provisions as to the removal of Governors are set out Annex 6.

16. **Council of Governors – duties of governors**

16.1 The general duties of the Council of Governors are –

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

   16.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.

16.2 The trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

17. **Council of Governors – meetings of governors**

17.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or paragraph 27.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 24 below), shall preside at meetings of the Board of Governors.
17.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of any particular meeting. Members of the public shall be excluded from meetings of the Council of Governors only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.

17.3 For the purposes of obtaining information about the trust’s performance of its functions or the directors’ performance of their duties (and deciding whether to propose a vote on the trust’s or directors’ performance), the Council of Governors may require one or more of the Directors to attend a meeting.

18. **Council of Governors – standing orders**

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

19. **Council of Governors – referral to the Panel**

19.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing —

19.1.1 to act in accordance with its constitution; or
19.1.2 to act in accordance with provisions made by or under Chapter 5 of the 2006 Act

19.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

20. **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.

21. **Council of Governors – travel expenses**

The trust may pay travelling and other expenses to members of the Council of Governors at rates and in accordance with a policy determined by the trust.
22. **Council of Governors – further provisions**

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

23. **Board of Directors – composition**

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

23.2 The Board of Directors is to comprise:

23.2.1 a non-executive Chairman

23.2.2 6 other non-executive directors; and

23.2.3 6 executive directors.

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

23.4 The Chief Executive shall be the Accounting Officer.

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

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

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

24. **Board of Directors – general duty**

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

25. **Board of Directors – qualification for appointment as a non-executive director**

A person may be appointed as a non-executive director only if –

25.1 he is a member of the Public Constituency, or

25.2 he is a member of the Patients’ Constituency, or

25.3 he is not disqualified by virtue of paragraph 31 below.
26. **Board of Directors – appointment and removal of chairman and other non-executive directors**

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.

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

26.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 27 below.

27. **Board of Directors – appointment of initial chairman and initial other non-executive directors**

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

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

27.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 25 above (other than disqualification by virtue of paragraph 31 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

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

28. **Board of Directors – appointment of deputy chairman and senior independent director**

28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

28.2 The Board shall, following consultation with the Council of Governors, appoint one of the independent non executive directors
as a Senior Independent Director to act in accordance with Monitor's Code of Governance and the Board's Standing Orders.

28.3 The offices of Deputy Chairman and Senior Independent Director may be held by the same Non-executive Director.

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

29.1 The non-executive directors shall appoint or remove the Chief Executive.

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

29.3 The initial Chief Executive is to be appointed in accordance with paragraph 30 below.

29.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

30. **Board of Directors – appointment and removal of initial Chief Executive**

30.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he wishes to be appointed.

30.2 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.

31. **Board of Directors – disqualification**

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

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

31.2 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.

31.3 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.
32. **Board of Directors – meetings**

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

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

33. **Board of Directors – standing orders**

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

33.2 The Board of Directors may adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the trust from time to time.

34. **Board of Directors - conflicts of interest of directors**

34.1 The duties that a director of the trust has by virtue of being a director include in particular –

34.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.

34.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

34.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if –

34.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

34.2.2 The matter has been authorised in accordance with the constitution.

34.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

34.4 In sub-paragraph 34.1.2 “third party” means a person other than –

34.4.1 The trust, or
34.4.2 A person acting on its behalf

34.5 If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.

34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

34.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.

34.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

34.9 A director need not declare an interest –

34.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest:

34.9.2 If, or to the extent that, the directors are already aware of it:

34.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –

34.9.3.1 by a meeting of the Board of Directors, or
34.9.3.2 by a committee of the directors appointed for the purpose under the constitution.

34.10 A matter shall be authorised for the purposes of paragraph 34.2.2:

34.10.1 the Board of Directors by majority disapproves the provision of the constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

34.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

34.10.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).
35. **Board of Directors – remuneration and terms of office**

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

35.2 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.

36. **Registers**

The trust shall have:

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

36.2 a register of members of the Council of Governors;

36.3 a register of interests of governors;

36.4 a register of directors; and

36.5 a register of interests of the directors.

37. **Admission to and removal from the registers**

37.1 Further provisions as to the registers are set out within Annex 9.

38. **Registers – inspection and copies**

38.1 The trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

38.2.1 any member of the Patients' Constituency; or

38.2.2 any other member of the trust, if he so requests

38.3 So far as the registers are required to be made available:
38.3.1 they are to be available for inspection free of charge at all reasonable times; and
38.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

38.4 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.

39. **Documents available for public inspection**

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

39.1.1 a copy of the current constitution;
39.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
39.1.3 a copy of the latest annual report.

39.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

39.3 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.

39.4 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:

39.4.1 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.

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

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

39.4.4 a copy of any draft report published under section 65F (administrator’s draft report) of the 2006 Act.

39.4.5 a copy of any statement provided under section 65F (administrator’s draft report) of the 2006 Act.
39.4.6 A copy of any notice published under section 65F (administrator’s draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor’s decision), 65KB (Secretary of State’s response to Monitor’s decision), 65KC (action following Secretary of State’s rejection of final report) or 65KD (Secretary of State’s response to re-submitted final report of the 2006 Act).

39.4.7 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

39.4.8 A copy of any final report published under section 65I (administrator’s final report).

39.4.9 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.

39.4.10 A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

39.5 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

39.6 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.

40. **Auditor**

40.1 The trust shall have an auditor.

40.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

41. **Audit committee**

41.1 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. The membership and terms of reference of the Audit Committee shall be subject to approval by the Board of Directors.

42. **Accounts**

42.1 The Trust must keep proper accounts and proper records in relation to the accounts.

42.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
42.3 The accounts are to be audited by the trust's auditor.

42.4 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the of the Secretary of State direct.

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

43. **Annual report, forward plans and non-NHS work**

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

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

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

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

43.5 Each forward plan must include information about –

43.5.1 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

43.5.2 the income it expects to receive from doing so.

43.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 43.5.1 the Council of Governors must –

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

43.6.2 notify the directors of the trust of its determination.

43.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.
44. **Presentation of the annual accounts and reports to the governors and members**

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

44.1.1 the annual accounts

44.2 any report of the auditor on them

44.3 the annual report.

44.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

44.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 44.1 with the Annual Members’ Meeting.

45. **Instruments**

45.1 The trust shall have a seal.

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

46. **Amendment of the constitution**

46.1 The Trust may make amendments of its constitution only if –

46.1.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and

46.1.2 More than half of the members of the Board of Directors of the trust voting approve the amendments.

46.2 Amendments made under paragraph 46.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

46.3 Where an amendment is made to the constitution in relation to the powers and duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust) –
46.3.1 At least one member of the Council of Governors must attend the next Annual Members’ Meeting and present the amendment, and

46.3.2 The trust must give the members an opportunity to vote on whether they approve the amendment.

46.4 If more than half of the members voting approve the amendment, the amendment continues to have effect, otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

46.5 Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor’s functions do not include a power or duty to determine whether or not the constitution as a result of the amendments, accords with Schedule 7 of the 2006 Act.

47. **Mergers etc. and significant transactions**

47.1 The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.

47.2 The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust voting approve entering into the transaction.

47.3 In this paragraph, the following words have the following meanings:

47.3.1 “Significant transaction” means a transaction which meets any one of the tests below:

   the fixed asset test; or

   the turnover test;

47.4 The turnover test is met if, following the completion of the relevant transaction, the gross income of the trust will increase or decrease by more than 25%.

47.5 The fixed asset is met if the assets which are the subject of the transaction exceeds 25% of the fixed assets of the trust.

47.6 A transaction:

   47.6.1 includes all agreements (including amendments to agreements) entered into by the trust

   47.6.2 excludes a transaction in the ordinary course of business including the renewal, extension or entering into an
agreement in respect of healthcare services carried out by the trust;
47.6.3 excludes any agreement or changes to healthcare services carried out by the trust following a reconfiguration of services led by the commissioners of such services;
47.6.4 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the trust.

48  Indemnity

48.1 Members of the Board of Directors and Council of Governors 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 of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the trust.

48.2 The trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors' and officers' liability, including, without limitation, liability arising by reason of the trust acting as a corporate trustee of an NHS charity.
ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 7.1 and 7.3)

The areas specified for public constituency are the five local authority areas described in the table below, which also sets out the minimum numbers required in each area.

<table>
<thead>
<tr>
<th>Area</th>
<th>Minimum Number of Members per Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adur</td>
<td>90</td>
</tr>
<tr>
<td>Arun</td>
<td>220</td>
</tr>
<tr>
<td>Chichester</td>
<td>160</td>
</tr>
<tr>
<td>Horsham</td>
<td>65</td>
</tr>
<tr>
<td>Worthing</td>
<td>150</td>
</tr>
</tbody>
</table>
ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.4 and 8.5)

<table>
<thead>
<tr>
<th>Class</th>
<th>Minimum Number of Members per Class</th>
</tr>
</thead>
<tbody>
<tr>
<td>Medical and Dental (registered practitioners)</td>
<td>100</td>
</tr>
<tr>
<td>Nursing &amp; Midwifery</td>
<td>100</td>
</tr>
<tr>
<td>Additional Clinical Services</td>
<td>100</td>
</tr>
<tr>
<td>Scientific, Technical and Professional (including Allied Health Professionals)</td>
<td>100</td>
</tr>
<tr>
<td>Estates and Ancillary</td>
<td>100</td>
</tr>
<tr>
<td>Administrative and Clerical</td>
<td>100</td>
</tr>
</tbody>
</table>
ANNEX 3 – THE PATIENTS’ CONSTITUENCY

(Paragraphs 8.4 and 8.6)

The minimum number of members in the patients’ constituency is 75.
### Elected Governors

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Area/Class</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>Adur</td>
<td>2</td>
</tr>
<tr>
<td>Public</td>
<td>Arun</td>
<td>4</td>
</tr>
<tr>
<td>Public</td>
<td>Chichester</td>
<td>3</td>
</tr>
<tr>
<td>Public</td>
<td>Horsham</td>
<td>1</td>
</tr>
<tr>
<td>Public</td>
<td>Worthing</td>
<td>3</td>
</tr>
<tr>
<td>Patients</td>
<td>None</td>
<td>3</td>
</tr>
<tr>
<td>Staff</td>
<td>Medical and Dental (registered practitioners)</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Nursing &amp; Midwifery</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Scientific, Technical and Professional (including Allied Health Professionals)</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Additional Clinical Services</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Estates and Ancillary</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Administrative and Clerical</td>
<td>1</td>
</tr>
</tbody>
</table>

**Total Number of Elected Governors**: 22

### Appointed Governors

<table>
<thead>
<tr>
<th>Type</th>
<th>Governor Appointed By:</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Local Authority</td>
<td>Chichester District Council</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Worthing Borough Council</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>West Sussex County Council</td>
<td>1</td>
</tr>
<tr>
<td>Partnership</td>
<td>Brighton &amp; Sussex Medical School</td>
<td>1</td>
</tr>
<tr>
<td>Partnership</td>
<td>Coastal West Sussex Clinical Commissioning Group</td>
<td>1</td>
</tr>
<tr>
<td>Partnership</td>
<td>Healthwatch West Sussex</td>
<td>1</td>
</tr>
<tr>
<td>Partnership</td>
<td>University of Brighton</td>
<td>1</td>
</tr>
<tr>
<td>Partnership</td>
<td>A governor shall be appointed by one of the following organisations from time to time for a 3-year appointment per governor per organisation (by rotation in the order listed in the absence of agreement between the organisations) and the organisation from which such a governor is appointed, or in default of agreement the organisation that is entitled to appoint a governor at any relevant time, shall be a &quot;partnership organisation&quot; for the purposes of Schedule 7 of the National Health Service Act 2006 (as amended from time to time) at such time:</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>The Friends of Chichester Hospitals</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The Friends of Worthing Hospitals</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The League of Friends of Southlands Hospital WRVVS</td>
<td></td>
</tr>
</tbody>
</table>

**Total Number of Appointed Governors**: 8

**Total Number of Governors**: 30
Annex 5 - Model Election Rules
Western Sussex Hospitals NHS Foundation Trust

Part 1 - Interpretation

1. Interpretation

Part 2 - Timetable for election

2. Timetable
3. Computation of time

Part 3 - Returning officer

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election
9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

Part 5 - Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

27
The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

32. Receipt of voting documents
33. Validity of ballot paper
34. Declaration of identity but no ballot paper
35. Sealing of packets

Part 6 - Counting the votes

stv36. Not used
37. Arrangements for counting of the votes
38. The count
stv39. Not used
fpp39. Rejected ballot papers
stv40. Not used
stv41. Not used
stv42. Not used
stv43. Not used
stv44. Not used
stv45. Not used
stv46. Not used
fpp46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections
stv47. Not used
48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election
Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate
stv54. Not used

Part 10 – Election expenses and publicity

Expenses

55. Expenses incurred by candidates
56. Expenses incurred by other persons
57. Personal, travelling, and administrative expenses

Publicity

58. Publicity about election by the corporation
59. Information about candidates for inclusion with voting documents
60. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

61. Application to question an election

Part 12 – Miscellaneous

62. Secrecy
63. Prohibition of disclosure of vote
64. Disqualification
65. Delay in postal service through industrial action or unforeseen event

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 NHS Act 2006

(2) Other expressions used in these rules and in Schedule 7 to the NHS Act 2006
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.

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

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 council of governors 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
(c) 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 spoilt 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*

**stv36. Not used**

37. **Arrangements for counting 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.

**Stv39. Not used**

**fpp39. 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 votes are given for more candidates than the voter is entitled to vote,
(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, subject to paragraphs (2) and (3) below, be rejected and not counted.
(2) Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

(3) A ballot paper on which a vote is marked –

(a) elsewhere than in the proper place,
(b) otherwise than by means of a clear mark,
(c) by more than one mark,

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

(4) The returning officer is to –

(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
(b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

(a) does not bear proper features that have been incorporated into the ballot paper,
(b) voting for more candidates than the voter is entitled to,
(c) writing or mark by which voter could be identified, and
(d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

stv40. Not used
stv41. Not used
stv42. Not used
stv43. Not used
stv44. Not used
stv45. Not used
stv46. Not used
fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. 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 candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be 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 the Western Sussex Hospitals NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
   (ii) in any other case, to the chairman of the corporation; and
(c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

(a) the total number of votes given for each candidate (whether elected or not), and
(b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

stv47. Not used

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 chairman 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 spoilt 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
(c) 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 chairman 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

fpp54. 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) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

(2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

(a) count and record the number of ballot papers that have been received, and
(b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(6) The returning officer is to 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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Not used
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. INTERPRETATION

1.1 In these Provisions, the clauses relating to Interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. APPLICATION OF THESE PROVISIONS

2.1 These Provisions apply to all meetings of the Council of Governors ("the Council") and all other relevant activities of the Governors. All Governors, Non-executive Directors and staff are required to abide by these Provisions, which also apply to any persons attending meetings of the Council.

2.2 Except where required by law or the constitution, at any meeting of the Council the Chairman (or in his absence, the person deputising for him) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).

2.3 Whilst the Secretary shall be responsible for ensuring that relevant staff are made aware of these Provisions, staff members are expected to familiarise themselves with the Provisions.

2.4 In the event of any actual or suspected non-compliance with these Provisions, the Governor or member of staff identifying such shall report it to the Secretary within 14 calendar days of the actual or suspected non-compliance being identified. The Secretary shall be responsible for taking action in respect of the report, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Council. Such a report shall be recorded in the minutes of the Council meeting and, subject to the Chairman’s decision, shall be reported to the Board of Directors ("the Board").

3. APPOINTMENT AND REMOVAL OF GOVERNORS

Election and Appointment to Office

3.1 Governors shall be elected or appointed by the means and on terms of office as prescribed by this constitution.

3.2 As more fully detailed in clauses 3.3-3.10 below, the first election to the Council shall, in order that future elections shall occur on a phased basis, be conducted in such a way as to result in the initial terms of office for Governors set out below:

<table>
<thead>
<tr>
<th>Constituency</th>
<th>Class</th>
<th>3-year terms</th>
<th>2-year terms</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public</td>
<td>Adur</td>
<td>1</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Public</td>
<td>Arun</td>
<td>2</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>Public</td>
<td>Chichester</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Public</td>
<td>Horsham</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Public</td>
<td>Worthing</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Patients</td>
<td>None</td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Staff</td>
<td>Medical and Dental</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>-----------------------------</td>
<td>--------------------</td>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Staff</td>
<td>Nursing &amp; Midwifery</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Additional Clinical Services</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Scientific, Technical, Professional</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Estates &amp; Ancillary</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Staff</td>
<td>Administrative and Clerical</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Totals</td>
<td></td>
<td>12</td>
<td>10</td>
<td>22</td>
</tr>
</tbody>
</table>

3.3 In relation to the first election to the Council, for the Adur class of the public constituency, the candidate with the highest number of votes shall hold office for a period of three years, except as otherwise provided by this Constitution, before the next election in relation to his office takes place. The candidate with the second highest number of votes shall hold office for a period of two years, except as otherwise provided by this Constitution, before the next election in relation to his office takes place.

3.4 In relation to the first election to the Council, for the Arun class of the public constituency, the two candidates with the first and second highest number of votes shall each hold office for a period of three years, except as otherwise provided by this Constitution, before the next election in relation to their respective offices takes place. The candidates with the third and fourth highest number of votes shall each hold office for a period of two years, except as otherwise provided by this Constitution, before the next election in relation to their respective offices takes place.

3.5 In relation to the first election to the Council, for the Chichester and Worthing classes in the public constituency, the two candidates with the first and second highest number of votes shall each hold office for a period of three years, except as otherwise provided by this Constitution, before the next election in relation to their respective offices takes place. The candidate with the third highest number of votes shall hold office for a period of two years, except as otherwise provided for by this Constitution, before the next election in relation to his office takes place.

3.6 In relation to the first election to the Council, for the Horsham class in the public constituency, the candidate with the highest number of votes shall hold office for a period of three years before the next election in relation to his office takes place.

3.7 In relation to the first election to the Council, for the patients constituency, the two candidates with the first and second highest number of votes shall each hold office for a period of three years, except as otherwise provided by this Constitution, before the next election in relation to their respective offices takes place. The candidate with the third highest number of votes shall hold office for a period of two years before the next election in relation to his office takes place.

3.8 In relation to the first election to the Council, for the Medical & Dental, Additional Clinical Services and Estates & Ancillary classes in the staff constituency, the candidate with the highest number of votes shall hold office for a period of three years before the next election in relation to his office takes place. For the Nursing & Midwifery, Scientific, Technical and Professional and Administrative & Clerical classes in the staff constituency, the candidate with the highest number of votes shall hold office for a period of two years before the next election in relation to his office takes place.
3.9 In all cases described within clauses 3.3 to 3.7 above, in relation to the first election to the Council, in the case of an uncontested election terms of office shall be decided by drawing lots, which will take place at a meeting of the Council of Governors.

3.10 With the exception of the initial terms of office, in relation to the first election to the Council set out above, Governors will be elected for three-year terms.

3.11 A Governor shall be eligible for re-election or re-appointment at the end of his first term, for one further term. A Governor may not serve as a Governor for more than two consecutive terms (resulting in a maximum of six years) without a break of at least two years. A Governor who resigns or whose tenure of office is terminated shall not be eligible for re-appointment or to stand for re-election for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a majority of the Council present and voting at a general meeting.

3.12 A Governor shall within 21 days of election or appointment sign and deliver to the Secretary a declaration in the form prescribed at Appendix A. No Governor shall be entitled to vote or count in the quorum at a meeting of the Council of Governors until his declaration has been received by the Secretary. Such a declaration shall be valid for the Governor's term of office.

Removal or Resignation from Office

3.13 A person shall not be eligible to become or continue in office as a Governor if:

3.13.1 any of the grounds contained in paragraph 14 of the Constitution apply to him;

3.13.2 in the case of an Elected Governor, he ceases to be eligible to be a member of the Trust or constituency. For the avoidance of doubt and in accordance with Constitution clause 13.2, a Public Governor who ceases to be eligible to be a member of that Public Constituency by virtue of moving to another area, shall cease to hold office. Subject to clause 3.11 of these Provisions and the Constitutional provisions in respect of eligibility for holding office as a Governor, a person ceasing to hold office by the means described in this clause shall be eligible to stand for election in the area to which he has moved.

3.13.3 he is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months;

3.13.4 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him or the organisation ceases to exist;

3.13.5 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;

3.13.6 he is a person whose term of office as the chair or as a member or director of a health service body has been terminated on the grounds
that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;

3.13.7 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list;

3.13.8 he has failed to make, or has falsely made, any declaration as required to be made under Section 69 of the 2006 Act or has spoken or voted in a meeting on a matter in which they have direct or indirect pecuniary or non-pecuniary interest and he is judged to have acted so by a majority of not less than three quarters of the Council.

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

3.13.10 he has received a written warning from the Trust for verbal and/or physical abuse towards any person;

3.13.11 he does not agree to (or, having agreed, fails to) abide by the values as published by the Trust;

3.13.12 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person’s Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974;

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

3.13.14 he is a member of the UK Parliament;

3.13.15 he is a Director of the Trust or a Governor of another NHS Foundation Trust;

3.13.16 he is a member of a relevant local authority Overview and Scrutiny Committee; or

3.13.17 he is not 16 years of age, or older, at the closing date for nominations for election or appointment.

3.13.18 his term of office is terminated pursuant to paragraph 3.14 below;

Termination of Office

3.14 A Governor’s term of office shall be terminated:

3.14.1 by the Governor giving notice in writing to the Secretary of his resignation from office at any time during that term of office;
3.14.2 by a majority of the Governors present and voting at a meeting of the Council if any grounds exist under paragraph 3.13 above

3.14.3 by a majority of the Governors voting at a meeting of the Council if he has failed to attend two successive meetings of the Council unless the Council is satisfied that:

(a) the absence was due to reasonable cause; and

(b) that the Governor will resume attendance at meetings of the Council within such period as it considers reasonable in the circumstances.

3.14.4 if the Council resolves to terminate his term of office on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council convened for that purpose that his continuing as a Governor would or would be likely to:

(a) prejudice the ability of the Trust to fulfill its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or

(b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or

(c) adversely affect public confidence in the goods and services provided by the Trust; or

(d) otherwise bring the Trust into disrepute or be detrimental to the interests of the Trust.

3.14.5 if three quarters of the Governors present and voting at a meeting of the Council resolve that:

(a) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or

(b) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or

(c) the Governor has failed to or refused to undertake and/or satisfactorily complete any training which the Council has required him to undertake in his capacity as a Governor by a date six months from the date of his election or appointment; or

(d) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, the Constitution, and/or the Terms of Authorisation; or

(e) he has committed a material breach of any Role Description or Code of Conduct applicable to Governors of the Trust and/or these Provisions.
3.15 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified, and the Secretary shall report the matter to the Council and the Board.

3.16 Upon a Governor resigning or ceasing to be eligible to continue in office that person shall cease to be a Governor and his name shall be removed from the Register of Governors.

Vacancies

3.17 Where a Governor resigns or his office is terminated, elected Governors shall be replaced in accordance with paragraphs 3.19 and 3.20 below and, in the case of Appointed Governors, the Trust shall within 30 days of the vacancy having arisen invite the appointing body to appoint a new Governor to hold office for the remainder of the term of office.

3.18 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chairman and Chief Executive of the Trust, who shall use their reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.

3.19 Where an Elected Governor ceases to hold office during his term of office, the Trust shall offer the unsuccessful candidate who secured the highest number of votes in the last election for the area or class in which the vacancy has arisen, the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate is unwilling, or unable, to fill the vacancy it will then be offered to that unsuccessful candidate who secured the next highest number of votes.

3.20 If there is no reserve candidate, or the reserve candidate is unable or unwilling to fill the vacancy, the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public or Patient Governors to be less than half the total membership of the Council. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable. A candidate elected mid-term, in this manner, shall have a period of tenure expiring at the next general election and, if elected at that general election, shall be deemed to have served two terms at the expiry of the further term.

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

4. DECLARATIONS AND REGISTER OF GOVERNORS' INTERESTS

4.1 In accordance with the Constitution, Governors are required to declare on election or appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the
business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.

4.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Governor’s election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.

4.3 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.

4.4 The term “relevant and material interests” may include (but may not be limited to) the following:

4.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);

4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;

4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;

4.4.4 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;

4.4.5 research funding/grants that may be received by an individual or their department;

4.5 Any traveling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.

4.6 Subject to any other provision of this Constitution, a Governor shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:

4.6.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
4.7 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

4.7.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

4.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.

4.9 If a Governor has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

5.1 Governors shall comply with the terms of the Role Description for Governors which shall be approved by the Council and the Board, and which the Secretary shall issue to Governors upon election or appointment to the Council. The Governors shall also comply with any codes of conduct or other standards referenced in the Role Description.

5.2 In the event that there are concerns about a Governor’s performance or conduct, the Chairman, with the support of the Secretary where necessary, will address these directly with the Governor concerned. Where necessary, the Chairman will make recommendations to the Council, including in respect of any proposal that the Council should remove the Governor from office in which case the Provisions of section 3 of these Provisions shall apply.
6. REMUNERATION AND BUSINESS EXPENSES

6.1 Governors shall not receive remuneration.

6.2 The Trust is permitted to reimburse traveling expenses to Governors for attendance at meetings of the Council, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Governor, at a rate and in accordance with a policy to be determined by the Board of Directors.

6.3 Expenses will be reimbursed by the Secretary on receipt of a completed and signed expenses form provided by the Secretary.

6.4 A summary of expenses paid to Governors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF COUNCIL OF GOVERNORS

7.1 The composition of the Council shall be as set out in Annex 4 of the Constitution.

7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Council is defined in its Terms of Reference which shall be approved by the Council and the Board.

7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.

7.4 The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.

7.5 The role of the Lead Governor shall be as defined in a Role Description which shall be approved by the Council and the Board.

8. COMMITTEES OF THE COUNCIL

8.1 Subject to the constitution, the Terms of Authorisation and such binding guidance as may be given by Monitor, the Council may and, if so required by Monitor, shall appoint committees of the Council consisting wholly or partly of members of the Trust (whether or not they include Governors) or wholly of persons who are not members of the Trust (whether or not they include Governors). The Council shall not delegate any of its powers to a committee but committees may act in an advisory capacity to assist the Council in carrying out its functions.

8.2 These Provisions of the Council shall apply with appropriate alteration to any committees established by the Council.

8.3 Each such committee or sub-committee shall have such terms of reference. Such terms of reference and the membership of committees or sub-committees shall be subject to approval by the Council.

8.4 The Council shall approve the appointment of the Chair and members for each of the committees which it has formally constituted. Where the Council determines that persons who are neither Governors nor staff shall be appointed to a committee, the terms of such appointment shall be determined by the Council. The Council may request that external advisers assist them or any committee they appoint in carrying out its duties.
9. SUSPENSION, AMENDMENT AND REVIEW OF THESE PROVISIONS

Suspension

9.1 These Provisions shall not be suspended except:

9.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Provisions, he may do so subject to such action being reported to the next meeting of the Council.

9.1.2 at a meeting of the Council, at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors.

9.2 Any decision to waive Provisions shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

9.3 These Provisions shall be reviewed one year after approval by the Council and then at least annually thereafter.

9.4 These Provisions shall be amended only if:

9.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and

9.4.3 at least three quarters of the Governors present and voting at a meeting of the Council, including one Staff Governor, one Public Governor and one Appointed Governor are in favour of amendment.

9.4.4 The proposed amendment(s) has/have been discussed the Board.

9.5 All amendments to these Provisions shall be subject to approval through any process prescribed by Monitor.
DECLARATION BY GOVERNOR

WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST
(the "Trust")

I, .................................................................................... (insert full name)
of ..............................................................................................
..............................................................................................
..............................................................................................(insert address)

Hereby declare that I am entitled to:-

(a) be elected to the Council of Governors as a Governor elected by one of the public
constituencies/ the staff constituencies* because I am a member of one of the public
constituencies/ /staff constituencies *, or

(b) be appointed to the Council of Governors as a governor because I have been
appointed by a nominating organisation

and that I am not prevented from being a member of the Council of Governors of the
Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under
the Constitution of the Trust and that I am entitled to vote at meetings of the Council of
Governors as a governor pursuant to such appointment or election.

Signed ....................................................................................

Print Name....................................................................................

Date of Declaration ......................................................................
ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1. MEETINGS OF THE COUNCIL OF GOVERNORS

Frequency of Meetings

1.1 The Council of Governors ("the Council") shall decide the frequency of and calendar for its meetings, subject to the Council holding a minimum of four general meetings per year. The Secretary shall ensure that within the meeting cycle of the Council, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

1.2 Notwithstanding clause 1.1 above, the Chairman may at any time call a meeting of the Council. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors including at least two elected and two appointed Governors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Governors may forthwith call a meeting of the Council.

Admission of the Public

1.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Council unless the Council decides otherwise in relation to all or part of any particular meeting. The public shall be excluded from meetings of the Council only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.

1.4 The Chairman may exclude any member of the public from a meeting of the Council if the person is interfering with or preventing the proper conduct of the Council's business. The Chairman's decision in this respect shall be final.

1.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Admission of Directors

1.6 Subject to Provisions in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council and, subject to the decision of the Chairman, to speak to any item under consideration.

Chairman for Meetings of the Council

1.7 Subject to clause 1.9 below, the Chairman of the trust, or in his absence, the Deputy Chairman shall preside at meetings of the Council. Neither the Chairman nor any person deputising for him shall be a member of the Council and he shall not have a vote on matters considered by the Council.

1.8 The Deputy Chairman may preside at meetings of the Council in the following circumstances:

1.8.1 when there is a need for someone to have the authority to chair any meeting of the Council when the Chair is not present
1.8.2 when the remuneration, allowance and other terms and conditions of the Chair are being considered.

1.8.3 when the appointment of the Chair is being considered, should the current Chair be a candidate for re-appointment.

1.8.4 on occasions when the Chair declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council.

1.9 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, one of the other Non Executive Directors shall preside. If in exceptional circumstances it would not be appropriate for any Non Executive Director to preside, the Council shall appoint one of its members to preside at that meeting. This shall normally be the Lead Governor.

1.10 Statements made by Governors at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

**Notice, Agenda and Papers for Meetings**

**Notice of Meeting**

1.11 Before each meeting of the Council, a notice of the meeting signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his/her behalf shall be delivered to every member of the Council, or sent by post to the usual place of residence of such Governor, no less than five clear working days in advance of the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.

1.12 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Governors at least 10 clear days written notice of the date and place of every meeting of the Council. Written notice shall be deemed to include communication by email. The notice shall be published on the Trust’s website and otherwise made available to members of the public as considered appropriate by the Trust.

1.13 In the case of a meeting called by the Governors in default of the Chairman, the notice shall be signed by those respective Governors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Governors shall not affect the validity of a meeting.
Agenda and Notification of Business

1.14 At the direction of the Council, the Secretary shall draw up and maintain an agenda plan for the Council’s meetings in each calendar year. The agenda plan shall take account of the work-plan for the Council, which it will agree with the Board of Directors ("the Board"). The agenda plan shall be approved by the Council at least once in each calendar year.

1.15 The Council may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.

1.16 A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chairman.

1.17 Before each meeting of the Council, an agenda setting out the business of the meeting, signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his/her behalf shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such governor specifying the business proposed to be transacted at it least five clear working days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Council has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Governors and approved by the Chairman. The agenda shall be published on the Trust’s website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

1.18 The Secretary shall be responsible for compiling and distributing to Governors (and, where their attendance is permitted, members of the public) papers for meetings of the Council. Papers shall be issued at least five clear working days prior to each meeting of the Council. Papers will only be tabled at the Council’s meetings in exceptional circumstances and then only with the prior approval of the Chairman.

Quorum for Meetings

1.19 A meeting of the Council shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that the following requirements are all satisfied:

   1.19.1 there shall be present at the meeting at least one third of all Governors
   1.19.2 of those present, at least 51% shall be Elected Governors
   1.19.3 of whom at least two shall be Elected Public Governors

A Governor shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Governors present at the meeting.
If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

1.20 If a Governor has declared a direct pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.

1.21 Where a Governor:

1.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and

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

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

1.21.4 the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.

1.22. A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting.

1.23 The minutes shall record any declarations of interests on the part of Governors and any action taken in respect of them.

Conduct of Business

1.24 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chair so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.

1.25 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

1.26 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

1.27 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
1.28 In no circumstances may an absent Governor vote by proxy.

Minutes of Meetings

1.29 The minutes of the meeting, which shall include the names of the Governors present, shall be drawn up and submitted for the Council's approval at its next meeting. Subject to the Chairman's approval, the minutes may be circulated in draft form to Governors prior to the Council's next meeting and made available to the public (including through the Trust's website).

1.30 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chair considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

1.31 Where the Council so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Council may take decisions by means of a written resolution.

1.32 A resolution in writing sent to all Governors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Council duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governor.

2. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

2.1 These Standing Orders shall not be suspended except:

2.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Council

2.1.2 at a meeting of the Council, at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors

2.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.
Amendment and Review

2.3 These Standing Orders shall be reviewed one year after approval by the Council and then at least annually thereafter.

2.4 These Standing Orders shall be amended only if:

2.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and

2.4.3 at least three quarters of the Governors present and voting at a meeting of the Council, including one Staff Governor, one Public Governor and one Appointed Governor are in favour of amendment.

2.4.4 The proposed amendment(s) has/have been discussed the Board.

2.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by Monitor.
1. **INTERPRETATION**

1.1 In these Standing Orders, the provisions relating to Interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. **APPLICATION OF STANDING ORDERS**

2.1 These Standing Orders apply to all meetings of the Board of Directors ("the Board") and all other relevant activities of the Directors. All Directors and staff are required to abide by these Standing Orders, which also apply to any persons attending meetings of the Board.

2.2 Except where required by law or the constitution, at any meeting of the Board the Chairman (or in his absence, the person deputising for him) shall be the final authority on the interpretation of these Standing Orders (on which he should be advised by the Chief Executive and the Secretary).

2.3 Whilst the Secretary shall be responsible for ensuring that relevant staff are made aware of these Standing Orders, staff members are expected to familiarise themselves with the provisions.

2.4 In the event of any actual or suspected non-compliance with these Standing Orders, the person identifying such shall report it to the Secretary within 14 calendar days of the actual or suspected non-compliance being identified. The Secretary shall be responsible for taking action in respect of the report, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. **MEETINGS OF THE BOARD OF DIRECTORS**

**Frequency of Meetings**

3.1 The Board shall decide the frequency of and calendar for its meetings, subject to the Board holding not less than four per year. The Secretary shall ensure that within the meeting cycle of the Board, meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

3.2 Notwithstanding clause 3.1 above, the Chairman may at any time call a meeting of the Board. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within 7 days after such requisition has been presented to him/her at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting of the Board.
Admission of the Public and Observers

3.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Board unless the Board decides otherwise in relation to all or part of any particular meeting. The Board may also invite observers to attend its meetings.

3.4 The public shall be excluded from meetings of the Board only where the business under discussion is commercially sensitive or is otherwise considered to be confidential. The Chairman may exclude any member of the public from a meeting of the Board if the person is interfering with or preventing the proper conduct of the Board’s business. The Chairman’s decision in this respect shall be final.

3.5 The Chairman shall decide the arrangements through which any questions from members of the public will be asked and answered.

Chairman for Meetings of the Board

3.6 The Chairman of the Trust, or in his absence, the Deputy Chairman shall preside at meetings of the Board.

3.7 The Deputy Chairman may preside at meetings of the Board in the following circumstances:

3.7.1 when there is a need for someone to have the authority to chair any meeting of the Board when the Chair is not present

3.7.2 on occasions when the Chair declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Board.

3.8 If it would not be appropriate for the Chairman or the Deputy Chairman to preside, one of the other Non Executive Directors shall preside.

3.9 Statements made by Directors at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

3.10 Before each meeting of the Board, a notice of the meeting signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every member of the Board, or sent by post to the usual place of residence of such Director, no less than five clear working days before the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.

3.11 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Directors at least 10 clear working days written notice of the date and place of every meeting of the Board. Written notice
shall be deemed to include communication by email. Notice will also be published on the Trust's website.

3.12 In the case of a meeting called by the Directors in default of the Chairman, the notice shall be signed by those respective Directors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Directors shall not affect the validity of a meeting.

Agenda and Notification of Business

3.13 At the direction of the Board, the Secretary shall draw up and maintain a plan for the agenda of the Board's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Board, which it will agree with the Council. The agenda plan shall be approved by the Board at least once in each calendar year.

3.14 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.

3.15 A Director desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chairman or the Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chairman.

3.16 Before each meeting of the Board, an agenda setting out the business of the meeting, signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every member of the Board, or sent by post to the usual place of residence of such Director specifying the business proposed to be transacted at it at least five clear working days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Board has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Directors and approved by the Chairman. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

3.17 The Secretary shall be responsible for compiling and distributing to Directors (and, where their attendance is permitted, members of the public) papers for meetings of the Board. Papers shall be issued at least five clear working days prior to each meeting of the Board. Papers will only be tabled at the Board's meetings in exceptional circumstances and then only with the prior approval of the Chairman.
Quorum for Meetings

3.18 A meeting of the Board shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that at least half of the Board must be present, including one Non-executive Director and one Executive Director. A Director shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Directors present at the meeting.

3.19 If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chairman.

3.20 If a Director has declared a direct pecuniary interest in any matter, the Director must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.

3.21 Where a Director:

3.21.1 has declared an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and

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

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

3.21.4 the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.

3.22 A Director who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Director will count towards the quorum of the meeting.

3.23 The minutes shall record any declarations of interests on the part of Directors and any action taken in respect of them.

3.24 An Officer who has been appointed to act for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director, and shall therefore count towards the quorum. An Officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence in the absence of a formal acting arrangement shall not exercise the voting rights of the Executive Director or count towards the quorum. The minutes shall record the status of Officers attending to represent Executive Directors.
Conduct of Business

3.25 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chair so determines or if a Director requests, a question at a meeting shall be determined by a majority of the votes of the Director present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.

3.26 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

3.27 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

3.28 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

3.29 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

Minutes of Meetings

3.30 The minutes of the meeting, which shall include the names of the Directors present, shall be drawn up and submitted for the Board’s approval at its next meeting. Subject to the Chairman’s approval, the minutes may be circulated in draft form to Directors prior to the Board’s next meeting and made available to the public (including through the Trust’s website).

3.31 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chair considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

3.32 Where the Board so decides in respect of any matter or, where it is necessary, at the discretion of the Chairman, the Board may take decisions by means of a written resolution.

3.33 A resolution in writing sent to all Directors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.
4. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

4.1 These Standing Orders shall not be suspended except:

4.1.1 where urgent action is required and the Chairman considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Board
4.1.2 at a meeting of the Board, at least half of the total number of Directors are present, such number to include on Non-executive Director

4.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Board and shall be reported to the Audit Committee.

Amendment and Review

4.3 These Standing Orders shall be reviewed one year after approval by the Board and then at least annually thereafter.

4.4 These Standing Orders shall be amended only if:

4.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
4.4.2 at least three quarters of the Board present and voting at a meeting of the Board are in favour of amendment.
4.4.3 The proposed amendment(s) has/have been discussed the Council.

4.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by Monitor.
ANNEX 9 – FURTHER PROVISIONS

1. INTERPRETATION

1.1 In these Provisions, the clauses relating to Interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

PART A – PROVISIONS RELATING TO THE BOARD OF DIRECTORS

2. APPLICATION OF PROVISIONS

2.1 These Provisions apply to all meetings of the Board of Directors ("the Board") and all other relevant activities of the Directors. All Directors and staff are required to abide by these Provisions, which also apply to any persons attending meetings of the Board.

2.2 Except where required by law or the constitution, at any meeting of the Board the Chairman (or in his absence, the person deputising for him) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).

2.3 Whilst the Secretary shall be responsible for ensuring that relevant staff are made aware of these Provisions, staff members are expected to familiarise themselves with the provisions.

2.4 In the event of any actual or suspected non-compliance with these Provisions, the person identifying such shall report it to the Secretary within 14 calendar days of the actual or suspected non-compliance being identified. The Secretary shall be responsible for taking action in respect of the report, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. APPOINTMENT AND REMOVAL OF DIRECTORS

The provisions of this Section 3 shall be subject always to the first paragraphs numbered 21 to 31 (inclusive) in this Constitution.

Chairman and Non-executive Directors

3.1 The Council of Governors ("the Council") shall in General Meeting appoint and, where necessary, remove (with the approval of three-quarters of the Council) the Chairman and Non-executive Directors.

Chief Executive

3.2 There shall be a Nominations & Remuneration Committee of the Board which shall be responsible for appointing the Chief Executive. When the Committee is considering the appointment of the Chief Executive, it shall comprise of the Chairman and as many of the Non-executive Directors as the Board decides. The Committee shall make a recommendation to the Chairman and the other Non-executive Directors, and their decision shall be subject to approval by the Council.

Executive Directors

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3.3 The Board shall establish a Committee to appoint the Executive Directors. The Committee shall comprise of the Chairman, the Non-executive Directors and the Chief Executive. The Committee’s decision shall be final.

Terms of Office and Process

3.4 There shall be written policies and processes, approved by the Board, to set out the process by which the Chairman, Non-executive Directors, Chief Executive and Executive Directors shall be appointed, and through which their terms and conditions of appointed shall be decided. In the case of the Chairman, Non-executive Directors and the Chief Executive, these policies and processes shall be subject to the approval of the Council.

3.5 Save for the initial Chairman and initial Non-executive Directors who shall be appointed for a term in accordance with Clause 23.4 of the Constitution, the Chairman and the Non-executive Directors shall be appointed for a term of three years. Subject to other relevant provisions in the Constitution, Non-executive Directors shall be subject to re-appointment thereafter at intervals of no more than 3 years. Non-executive Directors may serve for a term beyond 6 years subject to annual re-appointment. No Non-executive Director shall serve for a term of more than nine years in aggregate.

Appointments – Other Matters

3.6 No defect in the election or appointment of a Director nor any deficiency in the composition of the Board shall affect the validity of any act or decision of the Board.

3.7 The Trust may confer on a person the title “Director” as an indication of his seniority and/or the corporate nature of his responsibilities within the Trust but such a person shall not be an Executive Director of the Trust for the purposes of the 2006 Act unless he is a member of the Board of Directors as defined by the Constitution and, therefore, subject to clause 3.24 of Annex 8, he will have no right to vote at meetings of the Board.

Removal or Resignation from Office

3.8 A person shall not be eligible to become or continue in office as a Director if:

3.8.1 in respect of a Non-executive Director, he does not meet the criteria for eligibility in paragraph 21 of the Constitution;

3.8.2 in respect of any Director, any of the grounds contained in paragraph 27 apply to him;

3.8.3 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;

3.8.4 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list;
3.8.5 Monitor has exercised its powers to remove him as a Director of the Trust or has suspended him from office or has disqualified him from holding office as a Director of the Trust for a specified period or Monitor has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;

3.8.6 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person’s Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974;

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

3.8.8 he is a Governor of the Trust or a Director of another NHS Foundation Trust;

Termination of Tenure

3.9 A Director’s term of office shall be terminated:

3.9.1 if he is a Non-executive Director and he gives notice in writing to the Secretary of his resignation from office at any time during that term of office;

3.9.2 if he is an Executive Director and he gives notice in writing to the Chief Executive of his resignation from office at any time;

3.10 Where a person has been appointed to the Board and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered him disqualified.

3.11 A Director whose tenure of office is terminated shall not be eligible for re-appointment for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a majority of the Board present and voting at a meeting.

3.12 Upon a Director resigning or ceasing to be eligible to continue in office that person shall cease to be a Director and his name shall be removed from the Register of Directors.

Vacancies

3.13 Where a Director resigns or his office is terminated, the vacancy shall be filled through the processes agreed as set out in clause 3.4 above.
4. DECLARATIONS AND REGISTER OF DIRECTORS' INTERESTS

4.1 In accordance with the Constitution, Directors are required to declare on appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust.

4.2 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Provisions and delivering it to the Secretary within 28 days of a Director's appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.

4.3 If a Director is present at a meeting of the Board and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.

4.4 The term "relevant and material interests" may include (but may not be limited to) the following:

4.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);

4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;

4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;

4.4.4 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;

4.4.5 research funding/grants that may be received by an individual or their department;

4.5 Any traveling or other expenses or allowances payable to a Director in accordance with this Constitution shall not be treated as a pecuniary interest.

4.6 Subject to any other provision of this Constitution, a Director shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:

4.6.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.

4.7 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

4.7.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

4.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.

4.9 If a Governor has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

5.1 Subject to the 2006 Act (as amended and/or replaced from time to time), Directors shall comply with the terms of relevant Role Descriptions which shall be approved by the Board and, as set out in these Provisions, the Council, and which the Secretary shall issue to Directors upon appointment to the Board. The Directors shall comply with any codes of conduct or other standards referenced in Role Descriptions.

5.2 In the event that there are concerns about a Non-executive Director's performance or conduct, the Chairman, with the support of the Secretary where necessary, will address these directly with the Non-executive Director concerned. Where necessary, the Chairman will make recommendations to the Board, including in respect of any proposal that the Board should remove the Non-executive Director from office in which case the provisions of section 3 of these Provisions shall apply.

5.3 In the event that there are concerns about an Executive Director's performance or conduct, the Chief Executive, with the support of the Secretary and others where necessary, will address these directly with the Executive Director concerned. Where necessary, the Chief Executive will make recommendations and/or reports to the Board, including in respect of any proposal that the Board should remove the Executive Director from office in which case the provisions of section 3 of these Provisions shall apply.

6. REMUNERATION AND BUSINESS EXPENSES

6.1 The Trust is permitted to reimburse traveling expenses to Non-executive Directors for attendance at meetings of the Board, or for any other business authorised by the Chairman as being reasonably within the role and duties of a Non-executive Director, at a rate to be determined by the Council of Governors. The Chief Executive shall be responsible for authorising expenses incurred by Executive
Directors, to be paid at a rate to be determined by the Chairman and Non-executive Directors.

6.2 A summary of expenses paid to Directors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF BOARD OF DIRECTORS

7.1 All of the Board’s business shall be conducted in the name of the Trust.

7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Board is defined in its Terms of Reference which shall be approved by the Board of Governors and the Board of Directors.

7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the composition of the Board shall be as set out in the Constitution.

7.4 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chairman and the role of Non-executive Director shall be as defined in Role Descriptions which shall be approved by the Council and the Board.

7.5 The Council shall appoint one of the Non-executive Directors to be Deputy Chairman. The role of the Deputy Chairman shall be as defined in a Role Description which shall be approved by the Council and the Board.

7.6 The Board shall appoint one of the Non-executive Directors to be the Senior Independent Director (“SID”). The role of Senior Independent Director shall be as defined in the Role Description which shall be approved by the Board.

8. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

8.1 Subject to the Constitution, Terms of Authorisation or any relevant statutory provision, the Board may make arrangements for the delegation, on behalf of the Board, of any of its powers to a committee of directors or to an executive director.

8.2 The Board shall delegate responsibility and authority on any terms which it considers to be appropriate, such terms to be defined in written terms of reference approved by the Board.

8.3 The Board’s arrangements for the exercise of functions through delegation shall be set out within a Scheme of Delegation to be approved by the Board. This shall include delegation to Committees and to Officers, and shall specify those matters which are reserved to the Board to decide.

9. COMMITTEES OF THE BOARD

9.1 Subject to the 2006 Act (as amended and/or replaced from time to time), the Board shall establish an Audit Committee and a Nominations & Remuneration Committee, whose role, responsibilities and authority shall be defined in terms of reference to be approved by the Board in accordance with the first paragraphs numbered 31 and 37 in this Constitution. The Board shall appoint the Chairmen and the Members of the Committees.

9.2 Subject to the constitution, the Terms of Authorisation and such binding guidance as may be given by Monitor, the Board may and, if so required by Monitor, shall appoint other committees of the Board consisting wholly or partly of Directors or
wholly of persons who are not Directors. The Board shall not delegate any of its powers to such committees but committees may act in an advisory capacity to assist the Board in carrying out its functions.

9.3 These Provisions of the Board shall as far as they are applicable apply with appropriate alteration to any committees established by the Board.

10. PROFESSIONAL ADVICE

10.1 The Board shall have direct access to any independent advice which it considers necessary for the proper discharge of its functions, such advice normally being obtained by the Secretary. Such advice shall be commissioned through terms of reference to be agreed by the Board and may be presented in written form and/or by advisors attending meetings of the Board. The Trust shall meet the cost of any such advice commissioned by the Board. The Board shall establish a policy to set out the circumstances in which and the arrangements through which advice shall be taken and reported to the Board.

11. DIRECTORS AND GOVERNORS: WORKING ARRANGEMENTS

Engagement, Collaboration and Consultation

11.1 The Board and the Council shall agree work-plans for their meetings and activities, which shall be complementary and integrated. The work-plans shall identify the matters on which and, where possible, the timetable over which the Board and the Council shall consult each other about the business which they deal with. The work-plans shall take account of the Trust's strategy and business plans.

11.2 As a minimum, the Board shall consult the Council on the following matters:

11.2.1 proposals for the Trust's strategy and its annual Business Plan;
11.2.2 proposals for significant service developments;
11.2.3 the Trust's operational performance and delivery against plans generally;
11.2.4 service reviews and evaluations in respect of the Trust's services; and
11.2.5 development of the Trust's membership and plans for engagement with patients and the public generally.

11.3 The Board shall present to the Council the Trust's Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.

11.4 The Board and the Council shall hold at least one joint meeting per year.

11.5 Directors and Governors may agree to attend each others' meetings through a schedule to be agreed by the Board and the Council.
Informal Communication

11.6 The Chairman shall use his reasonable endeavours to promote communication between the Board and the Council, including through:

11.6.1 participation of the Board in the induction, orientation and training of Governors;

11.6.2 development of special interest relationships between Non-Executive Directors and Governors;

11.6.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer;

11.6.4 involvement in membership recruitment and briefings at events organised by the Trust.

Formal Communication

11.7 Where it is otherwise necessary, such as where it is prescribed by the Constitution, Provisions, Terms of Authorisation or elsewhere, the Board and the Council shall communicate formally by the means set out below:

11.7.1 the Council may and, where required, shall at any time ask for matters to be referred to the Board. Any such referrals shall be made through the Chairman who shall arrange for the matter to be added to the agenda for the next scheduled meeting of the Board;

11.7.2 in the absence of the Council agreeing to refer a matter to the Board, any Governor may through the Chairman refer a matter to the Board of Directors but if the Chair declines to refer any such issue the said Governor may refer it provided that two thirds of the Governors present approve his request to do so. The Chairman shall then refer the matter to the Board and provide the response to the Council;

12. RESOLUTION OF DISPUTES

12.1 In the event of dispute between between the Council and the Board then the dispute resolution procedure set out below shall be followed in order to resolve the matters concerned. The Council and the Board shall at all times recognise their roles and responsibilities as defined in the Constitution, Provisions, Terms of Reference and any other documents approved.

12.2 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall endeavour through discussion with Governors and Directors or, if it is considered to be more expedient, appointed representatives of them, to resolve the matter to the reasonable satisfaction of both parties.

12.3 In the event that it is not possible to resolve the dispute through the process described in 12.2 above, the Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to clearly and concisely produce a
recommendation statement to the Council and to the Board with a view to resolving the dispute (the “Recommendation Statement”).

12.4 The Chairman or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, shall ensure that the Recommendation Statement, without amendment or abbreviation in any way, shall be considered at the next scheduled meeting of both the Council and the Board. Where it is considered necessary or expedient to convene a meeting of the Council or of the Board earlier than is otherwise scheduled then the Chairman shall do so and in this event the relevant provisions of Provisions shall apply.

12.5 If in the opinion of the Chair or, in the event that the dispute is about the conduct or performance of the Chairman, the Senior Independent Director, and following the further discussions prescribed in 12.4 there is no further prospect of a full resolution or, if at any stage in the process, in the opinion of the Chair or the Senior Independent Director (as the case may be) there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly. In the event that the dispute cannot be resolved, the decisions of the Board shall prevail. In the event that the dispute is resolved to the satisfaction of the Council and the Board the Board shall implement the decisions taken.

12.6 Nothing in this procedure shall prevent the Council, through the Lead Governor, from informing Monitor that in the Council’s reasonable opinion its concerns are such that if they remain unresolved the Trust will be at risk of breaching the terms of its Authorisation.
PART B – MEMBERSHIP OF THE TRUST

13. ELIGIBILITY FOR MEMBERSHIP

General

13.1 An individual shall not be eligible for membership of the Trust if he:

13.1.1 fails or ceases to fulfill the criteria for membership of any of the constituencies;

13.1.2 was formerly employed by the Trust or the Applicant NHS Trust and in the preceding two years was lawfully dismissed other than by reason of redundancy;

13.1.3 has been involved as a perpetrator in a serious incident of violence or abuse in the last five years at any of the Trust’s hospitals or against any of the Trust’s Governors, Directors, staff members or patients;

13.1.4 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person’s Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;

13.1.5 does not agree to abide by the Trust values as published by the Trust;

13.1.6 has been identified as a vexatious complainant or has been excluded from treatment at any of the Trust’s hospitals due to unacceptable behaviour;

13.1.7 is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust; or

13.1.8 is under the age of sixteen years.

13.2 It is the responsibility of members to ensure that they are eligible for membership but if the Trust is on notice that a member may be disqualified from membership, the Trust shall carry out all reasonable enquiries to establish whether or not this is the case.

13.3 Where an individual is held by the Trust to be ineligible and/or disqualified from membership of the Trust and disputes the Trust’s decision in this respect, the matter shall be referred to the Secretary (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.
13.4 The Secretary (or his nominated representative) shall:

(a) review the decision having regard to any representations made by the individual concerned and such other material, if any, as the Secretary considers appropriate;

(b) either confirm the decision or make some other decision as appropriate based on the evidence which he has considered; and

(c) communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

13.5 If the member is aggrieved of the decision of the Secretary he may appeal in writing to the Council Governors ("the Council") within 14 days of the Secretary's decision. The Council shall consider the matter at its next meeting and its decision shall be final.

**Public Membership**

13.6 For the purposes of determining whether an individual lives in a public constituency, an individual shall be deemed to do so if:

13.6.1 his name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or

13.6.2 the Trust is otherwise satisfied that the individual lives within the said area.

**Patient Membership**

13.7 An individual shall be deemed to be eligible for membership of the patient constituency if:

13.7.1 his name appears on the Trust’s systems as having been a patient in the period since 1 January 2008; or

13.7.2 he has been recorded by the Trust as having in the period since 1 January 2008 attended any of the Trust’s hospitals as the carer of a patient; or

13.7.3 he can otherwise provide evidence of his having been a patient at any of the Trust’s hospitals, or a carer of a patient, within the period since 1 January 2008, and in the reasonable opinion of the Trust the evidence is conclusive; and

13.7.4 he does not live within any of the areas defined as public constituencies.

**Staff Membership**

13.8 An individual shall be deemed to be eligible for membership of the staff constituency if he meets the eligibility criteria set out in the Constitution.
13.9 The members of the Medical and Dental Practitioners' staff class are individuals who are members of the staff constituency who are fully registered with their appropriate professional body, and, in the case of medical practitioners, who hold a licence to practice. For the avoidance of doubt the medical and dental practitioners' staff class shall also include junior doctors who are not yet fully registered with their appropriate professional body.

13.10 The members of the Nursing and Midwifery staff class are individuals who are members of the staff constituency and whose regulatory body, the Nursing and Midwifery Council, falls within the remit of the Council for the Regulation of Health Care Professions established by section 25 of the NHS Reform and Health Care Professionals Act 2002

14. APPLICATION FOR MEMBERSHIP

14.1 Where a person wishes to apply to become a member of the Trust, the following procedure shall apply

14.1.1 the Trust shall upon request supply him with a form of application for membership in a form determined by the Trust;

14.1.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust’s discretion signed on behalf of the applicant) the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;

14.1.3 unless the applicant is ineligible for membership or is disqualified from membership, the Trust shall cause his name to be entered on the Trust’s Register of Members and shall give notice in writing to the applicant of that fact;

14.1.4 upon the applicant’s name being entered on the Trust’s Register of Members he shall become a member;

14.1.5 the information to be included in the Trust’s Register of Members shall include the following details relating to that member:

(a) his/her full name and title;

(b) his/her date of birth;

(c) his/her full postal address;

(d) his/her home telephone number (if any);

(e) his/her email address (if any);

(f) the constituency and, where relevant, the area or class of which he/she is a member;

(g) the date upon which he/she became a member;

(h) his/her gender and ethnicity, and
14.2 For the avoidance of doubt and subject to the restrictions on making available register at paragraph 34.2 of the Constitution, where a member of the public makes a request to inspect the Register of Members, pursuant to paragraph 34 of the Constitution (Registers – inspection of copies), the Trust shall disclose only those parts of the Register that detail the members’ names, constituency, and, where relevant, their area or class within that constituency in accordance with paragraph 20 and paragraph 22(3) of Schedule 7 of the 2006 Act.

15. REGISTER OF MEMBERS

15.1 For the avoidance of doubt, an individual shall become a member on the date upon which his/her name is entered on the Trust’s Register of Members and shall cease to be a member upon the date on which his/her name is removed from the Register of Members as provided for in this Constitution.

15.2 The Register of Members and all other Registers shall be maintained in accordance with this Constitution or in accordance with the 2006 Act. The Registers shall be reviewed and updated regularly and, in the case of the Register of Members, within 14 days of receipt of any new or amended information about members.

15.3 Where in the reasonable opinion of the Trust a member is no longer eligible or is disqualified from Membership of the Trust it shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the member addressed to him at the address given in the Register of Members of its intention to remove him from the Register and that member has not within that period notified the Trust of his wish to continue as member and provided proof satisfactorily to the Trust of his continued eligibility.

16. TERMINATION OF MEMBERSHIP

16.1 A person shall cease to be a member if:

1.16.1 he resigns by notice in writing to the Trust;

1.16.2 he ceases to be entitled under this Constitution to be a member of any area within the Public Constituency or of any of the classes of the Staff Constituency or the areas of the Patient Constituency;

1.16.3 he is expelled from membership in accordance with the provisions of this Constitution;

1.16.4 he dies.

16.2 An individual who is a member of the Public Constituency shall cease to be eligible to continue as a member if he ceases to live in the area of the Public Constituency of which he is a member save as provided elsewhere in these rules. In the event that a member moves to another Public Constituency area and requests to be a member in that area, if the Trust is satisfied that the individual concerned lives in such other area, that individual shall thereafter be treated as a member of that other area within the Public Constituency.
16.3 Where an individual is a member by virtue of their eligibility to be a member of a Staff Class and they cease to be eligible for membership of that Staff Class but are eligible for membership of some other Staff Class, then the Trust may give notice to that member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.
PART C – OTHER PROVISIONS

17. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

17.1 The Common Seal of the Trust shall be kept by the Chief Executive or designated officer in a secure place.

17.2 The seal of the Trust shall not be affixed to any documents unless the sealing has been authorised by a resolution of the Board, a committee, or, where the Board so decides, one or more Officers. The seal shall only be affixed in the presence of two Directors.

17.3 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by those who attested the seal. A report of all sealings shall be made to the Board at least quarterly. (The report shall contain details of the seal number, a description of the document and the date of sealing).

18. SIGNATURE OF DOCUMENTS

18.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.

18.2 The Chief Executive or nominated Officer(s) shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

19. SECRETARY

19.1 The Trust shall have a Secretary, who may be an employee. The Secretary shall not be a Governor, or the Chief Executive or the Finance Director.

19.2 The Secretary shall be appointed and, where necessary, removed only by the Chairman and Chief Executive acting jointly, who shall report their actions to the Board and the Council.

19.3 The Secretary’s functions shall be set out within a Job Description which shall be approved by the Chairman and the Chief Executive.

20.0 INDEMNITY FOR GOVERNORS, DIRECTORS AND THE SECRETARY

20.1 Members of the Council and the Board 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 duties, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Litigation Special Health Authority to cover such costs.
21.0 AMENDMENT OF THE CONSTITUTION

21.1 The Trust shall only make amendments to this Constitution (including all Annexes) with the approval of Monitor.

21.2 No proposal for amendment of this Constitution shall be put to Monitor unless it has been approved by the Board, which shall consult the Council on each such proposal.

21.3 The Constitution shall be reviewed on the first anniversary of the Trust’s Authorisation or as soon as reasonably practicable thereafter and then annually thereafter.
To: Board of Directors                                      Date: 9 July 2013
From: Graham Lawrence, Company Secretary                   Agenda Item: 4

FOR INFORMATION

WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST PROVIDER LICENCE

1.00 INTRODUCTION

1.01 This paper briefs the Board of Directors on the principal points from the Foundation Trust's Provider Licence.

2.00 PURPOSE AND PRINCIPAL CONTENT OF PROVIDER LICENCE

2.01 Prior to 1 April 2013 Monitor had the role of authorising and regulating Foundation Trusts (FT), the basis for this being the "Terms of Authorisation" which Monitor issued to each FT upon authorisation. From 1 April 2013 the Health & Social Care Act 2012 changed the way in which NHS healthcare providers are regulated such that Monitor became responsible for licensing all providers, including FTs. Monitor also acquired a much broader role in the regulation of NHS providers, though the majority of this new role has yet to come into effect. The principal elements of the role are:

- setting prices for NHS-funded care in partnership with NHS England
- enabling integrated care
- preventing anti-competitive behaviour which is against the interests of patients
- supporting commissioners to maintain continuity of services

2.02 The Act requires Monitor to issue a licence, called the NHS Provider Licence, to all providers. For FTs, the licence replaces the Terms of Authorisation. The licence permits the receiving organisation to operate as a provider of healthcare services, although, for most, it is also necessary for them to register with, i.e. have permission from, the Care Quality Commission. Following consultation by Monitor (on the content of the licence) this requirement is in effect for FTs and comes into force for all other providers – such as NHS Trusts, GP practices and private sector providers – from April 2014. Monitor has issued this Trust with an NHS Provider Licence, attached.

2.03 The licence contains conditions which translate legislative requirements (on Monitor and providers) into a form which can be implemented by each provider. These conditions are the basis for Monitor to regulate providers, including this organisation. The majority of the conditions apply to all types of provider but some, particularly section six, apply only to FTs. Monitor has the power under the Act to apply organisation-specific conditions in the licence where it considers this to be necessary – for example, if a provider is failing to comply with some requirements and Monitor decides to apply additional conditions in response to this.

2.04 The licence is structured around seven sections, the majority of which reflect the aspects of Monitor's role in regulating providers. The following is a summary of the licence conditions:
General Conditions

- These conditions include a requirement to provide Monitor with any information it may require for its functions, in a form to be determined by Monitor. The conditions also require providers to publish information determined by Monitor.

- The Act gives Monitor the power to charge fees for its regulation of providers. It does not currently do so and does not currently have plans to introduce fees but these conditions require providers to pay such fees if they are introduced. (This is common in regulation within other sectors.)

- The conditions require providers to “have regard to” any guidance published by Monitor and to explain any departures from such guidance. This is a common regulatory approach, known as “comply or explain”, as is the requirement to put into place systems to ensure compliance with all of Monitor’s regulatory requirements. The licence also requires providers to be registered with the Care Quality Commission.

- Providers are required to ensure that all Directors and Governors are “fit and proper persons” (to govern the organisation) as defined in the licence. As stated elsewhere in the papers for this meeting, all Directors and Governors have confirmed that they meet the criteria.

- The licence requires providers to have and to publish criteria for eligibility for treatment.

Pricing

- These conditions include a requirement to record the costs of NHS-funded services in categories and in other ways defined by Monitor. This is to support Monitor in its role in setting prices for services. Providers are required to provide this information to Monitor in whatever way the regulator determines. If requested by Monitor, providers are also required to commission a report to provide assurance as to the accuracy of the cost (and other) information given to Monitor.

- The conditions require providers to charge for NHS services in accordance with the National Tariff, which will be set by Monitor, and, where this does not apply, to engage constructively with local commissioners to set prices at that level – for example, when a provider cannot make a service available at the price set nationally. Providers and commissioners will be able to ask Monitor to determine a price when this cannot be agreed locally.

Choice and Competition

- These conditions require providers to support patients to make choices about their care. Providers are required to notify patients when they have a choice of provider and to tell patients where they can find information about the choices available. Monitor recognises that this is a complex requirement, not least because choices vary across geographical areas, so Monitor will be providing guidance on the application of these conditions.

- To support patient choice and also to encourage improvement in care, providers are prohibited from engaging in any behaviour which would, or would be likely to, prevent competition between providers. This is a complex area of law which has only recently been applied to NHS services so Monitor intends to publish guidance as to the types of behaviour which it regards as anti-competitive.
Integrated Care

- Monitor’s broader role includes a requirement to enable integrated care for the benefit of patients. Its expectation is that this will be driven locally through the structures of services purchased by commissioners, to be enforced through contracts. However, these licence conditions allow Monitor to intervene when it considers that care is not sufficiently integrated through any action on the part of providers to prevent this. It will be obvious that there is a potential conflict between the requirement to integrate care whilst also avoiding anti-competitive behaviour; Monitor intends to publish guidance in this area.

Continuity of Services

- These conditions have the aim of ensuring that in each geographical area commissioners define those services which must remain in place for the benefit of patients, to be known as Commissioner Requested Services (CRS). Providers are prohibited from ceasing to offer CRS without the agreement of commissioners and, where there is disagreement, Monitor.

- The conditions also provide the basis for Monitor’s regulation of each provider’s financial position, including through ratings and asset management. Linked to this, the conditions establish the basis for action when providers fail financially, including to ensure the continuity of CRS.

Foundation Trust Conditions (applicable only to FTs)

- These conditions require FTs to provide information to Monitor, including documents required in order for Monitor to maintain a register of FTs. There is little difference between these conditions and the (former) Terms of Authorisation. The conditions also require FTs to pay further fees to Monitor if it introduces them but it has committed to consult further before it do so.

- The conditions also introduce a requirement to provide information to the Advisory Panel which Monitor will establish to respond to requests for advice from Governors. Monitor has not yet published details of the Panel but it is understood that, on request from a Council of Governors, it will advise a Council which considers that an FT has, or is likely to, breach the terms of its licence or other regulatory requirements. (As Governors are aware, their role includes holding the Non-executive Directors to account for the performance of the Board, and therefore, since the Board is responsible for this, for the Trust’s compliance with regulatory requirements and performance.)

- Providers will be required to provide an annual Corporate Governance Statement which will describe corporate governance arrangements and also makes statements as to compliance (currently and in the forthcoming year) with performance targets. The statement will replace the various Board certifications which FTs have had to submit to Monitor in the past and it will become the basis of Monitor’s regulation of performance and governance generally.

3.00 COMPLIANCE ARRANGEMENTS: NEXT STEPS

3.01 The above information is (necessarily at this time) very significantly summarised from the licence and associated guidance from Monitor. It will be necessary for the Board and the Council to have a more in-depth briefing on the licence and on the arrangements which the Trust will put into place to ensure compliance with the requirements. The requirements reflect some which are already in place (from the NHS Trust) so these will be reviewed and proposals...
will be put to the Board for any further work required. Alongside this the Board and Council will be briefed in detail. It should be noted that the initial review undertaken has not identified any areas in which the Trust is non-compliant to any material extent.

3.02 When necessary alongside licencing a Foundation Trust Monitor issues a ‘side letter’ to highlight areas where it will continue to focus particular regulatory oversight. Monitor has issued the Trust with the attached side letter, highlighting three areas:

- full implementation of the cost improvement programme quality impact assessment process;
- embedding of recent enhancements to the responsibilities of the Quality & Risk Committee (a committee of the Board);
- implementation of the action plan associated with external reviews of mortality governance.

3.03 It should be noted that these are not conditions attached to the Trust’s licence but, as the letter explains, they are areas where Monitor requires assurance in due course. The Council will be briefed at a later meeting on the arrangements through which the Board proposes to provide that assurance. As part of its role the Council will be required to gain assurance that the Board is properly addressing these requirements from Monitor.

4.00 RECOMMENDATION

4.01 The Board of Directors is asked to note this Foundation Trust’s Provider Licence.
# Version History

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Standard Licence Conditions

Licence Number: 110147
NHS Provider Licence Standard Conditions

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Condition G1 – Provision of information

1. Subject to paragraph 3, and in addition to obligations under other Conditions of this Licence, the Licensee shall furnish to Monitor such information and documents, and shall prepare or procure and furnish to Monitor such reports, as Monitor may require for any of the purposes set out in section 96(2) of the 2012 Act.

2. Information, documents and reports required to be furnished under this Condition shall be furnished in such manner, in such form, at such place and at such times as Monitor may require.

3. In furnishing information documents and reports pursuant to paragraphs 1 and 2 the Licensee shall take all reasonable steps to ensure that:

   (a) in the case of information or a report, it is accurate, complete and not misleading;

   (b) in the case of a document, it is a true copy of the document requested; and

4. This Condition shall not require the Licensee to furnish any information, documents or reports which it could not be compelled to produce or give in evidence in civil proceedings before a court because of legal professional privilege.
Section 1 – General Conditions

Condition G2 – Publication of information

1. The Licensee shall comply with any direction from Monitor for any of the purposes set out in section 96(2) of the 2012 Act to publish information about health care services provided for the purposes of the NHS and as to the manner in which such information should be published.

2. For the purposes of this condition “publish” includes making available to the public, to any section of the public or to individuals.
Section 1 – General Conditions

**Condition G3 – Payment of fees to Monitor**

1. The Licensee shall pay fees to Monitor in each financial year of such amount as Monitor may determine for each such year or part thereof in respect of the exercise by Monitor of its functions for the purposes set out in section 96(2) of the 2012 Act.

2. The Licensee shall pay the fees required to be paid by a determination by Monitor for the purpose of paragraph 1 no later than the 28th day after they become payable in accordance with that determination.
Section 1 – General Conditions

Condition G4 – Fit and proper persons as Governors and Directors (also applicable to those performing equivalent or similar functions)

1. The Licensee shall ensure that no person who is an unfit person may become or continue as a Governor, except with the approval in writing of Monitor.

2. The Licensee shall not appoint as a Director any person who is an unfit person, except with the approval in writing of Monitor.

3. The Licensee shall ensure that its contracts of service with its Directors contain a provision permitting summary termination in the event of a Director being or becoming an unfit person. The Licensee shall ensure that it enforces that provision promptly upon discovering any Director to be an unfit person, except with the approval in writing of Monitor.

4. If Monitor has given approval in relation to any person in accordance with paragraph 1, 2, or 3 of this condition the Licensee shall notify Monitor promptly in writing of any material change in the role required of or performed by that person.

5. In this Condition an unfit person is:

   (a) an individual;

      (i) who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or

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

      (iii) who within the preceding five years has been convicted in the British Islands of any offence and 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; or

      (iv) who is subject to an unexpired disqualification order made under the Company Directors’ Disqualification Act 1986; or

   (b) a body corporate, or a body corporate with a parent body corporate:
Section 1 – General Conditions

(i) where one or more of the Directors of the body corporate or of its parent body corporate is an unfit person under the provisions of sub-paragraph (a) of this paragraph, or

(ii) in relation to which a voluntary arrangement is proposed under section 1 of the Insolvency Act 1986, or

(iii) which has a receiver (including an administrative receiver within the meaning of section 29(2) of the 1986 Act) appointed for the whole or any material part of its assets or undertaking, or

(iv) which has an administrator appointed to manage its affairs, business and property in accordance with Schedule B1 to the 1986 Act, or

(v) which passes any resolution for winding up, or

(vi) which becomes subject to an order of a Court for winding up.
Condition G5 – Monitor guidance

1 Without prejudice to any obligations in other Conditions of this Licence, the Licensee shall at all times have regard to guidance issued by Monitor for any of the purposes set out in section 96(2) of the 2012 Act.

2 In any case where the Licensee decides not to follow the guidance referred to in paragraph 1 or guidance issued under any other Conditions of this licence, it shall inform Monitor of the reasons for that decision.
1. The Licensee shall take all reasonable precautions against the risk of failure to comply with:
   (a) the Conditions of this Licence,
   (b) any requirements imposed on it under the NHS Acts, and
   (c) the requirement to have regard to the NHS Constitution in providing health care services for the purposes of the NHS.

2. Without prejudice to the generality of paragraph 1, the steps that the Licensee must take pursuant to that paragraph shall include:
   (a) the establishment and implementation of processes and systems to identify risks and guard against their occurrence; and
   (b) regular review of whether those processes and systems have been implemented and of their effectiveness.

3. Not later than two months from the end of each Financial Year, the Licensee shall prepare and submit to Monitor a certificate to the effect that, following a review for the purpose of paragraph 2(b) the Directors of the Licensee are or are not satisfied, as the case may be that, in the Financial Year most recently ended, the Licensee took all such precautions as were necessary in order to comply with this Condition.

4. The Licensee shall publish each certificate submitted for the purpose of this Condition within one month of its submission to Monitor in such manner as is likely to bring it to the attention of such persons who reasonably can be expected to have an interest in it.
Section 1 – General Conditions

Condition G7 – Registration with the Care Quality Commission

1. The Licensee shall at all times be registered with the Care Quality Commission in so far as is necessary in order to be able lawfully to provide the services authorised to be provided by this Licence.

2. The Licensee shall notify Monitor promptly of:

   (a) any application it may make to the Care Quality Commission for the cancellation of its registration by that Commission, or

   (b) the cancellation by the Care Quality Commission for any reason of its registration by that Commission.

3. A notification given by the Licensee for the purposes of paragraph 2 shall:

   (a) be made within 7 days of:

      (i) the making of an application in the case of paragraph (a), or

      (ii) becoming aware of the cancellation in the case of paragraph (b), and

   (b) contain an explanation of the reasons (in so far as they are known to the Licensee) for:

      (i) the making of an application in the case of paragraph (a), or

      (ii) the cancellation in the case of paragraph (b).
Section 1 – General Conditions

Condition G8 – Patient eligibility and selection criteria

1. The Licensee shall:

   (a) set transparent eligibility and selection criteria,

   (b) apply those criteria in a transparent way to persons who, having a choice of persons from whom to receive health care services for the purposes of the NHS, choose to receive them from the Licensee, and

   (c) publish those criteria in such a manner as will make them readily accessible by any persons who could reasonably be regarded as likely to have an interest in them.

2. “Eligibility and selection criteria” means criteria for determining:

   (a) whether a person is eligible, or is to be selected, to receive health care services provided by the Licensee for the purposes of the NHS, and

   (b) if the person is selected, the manner in which the services are provided to the person.
1. The Conditions in Section 5 shall apply:

(a) whenever the Licensee is subject to a contractual or other legally enforceable obligation to provide a service which is a Commissioner Requested Service, and

(b) from the commencement of this Licence until the Licensee becomes subject to an obligation of the type described in sub-paragraph (a), if the Licensee is an NHS foundation trust which:

(i) was not subject to such an obligation on commencement of this Licence, and

(ii) was required to provide services, or was party to an NHS contract to provide services, as described in paragraph 2(a) or 2(b);

for the avoidance of doubt, where Section 5 applies by virtue of this subparagraph, the words “Commissioner Requested Service” shall be read to include any service of a description falling within paragraph 2(a) or 2(b).

2. A service is a Commissioner Requested Service if, and to the extent that, it is:

(a) any service of a description which the Licensee, being an NHS foundation trust with an authorisation date on or before 31 March 2013, was required to provide in accordance with condition 7(1) and Schedule 2 in the terms of its authorisation by Monitor immediately prior to the commencement of this Licence, or

(b) any service of a description which the Licensee, being an NHS foundation trust with an authorisation date on or after 1 April 2013, was required to provide pursuant to an NHS contract immediately before its authorisation date, or

(c) any other service which the Licensee has contracted with a Commissioner to provide as a Commissioner Requested Service.

3. A service is also a Commissioner Requested Service if, and to the extent that, not being a service within paragraph 2:
Section 1 – General Conditions

(a) it is a service which the Licensee may be required to provide to a Commissioner under the terms of a contract which has been entered into between them, and

(b) the Commissioner has made a written request to the Licensee to provide that service as a Commissioner Requested Service, and either

(c) the Licensee has failed to respond in writing to that request by the expiry of the 28th day after it was made to the Licensee by the Commissioner, or

(d) the Commissioner, not earlier than the expiry of the [28th] day after making that request to the Licensee, has given to Monitor and to the Licensee a notice in accordance with paragraph 4, and Monitor, after giving the Licensee the opportunity to make representations, has issued a direction in writing in accordance with paragraph 5.

4. A notice in accordance with this paragraph is a notice:

(a) in writing,

(b) stating that the Licensee has refused to agree to a request to provide a service as a Commissioner Requested Service, and

(c) setting out the Commissioner’s reasons for concluding that the Licensee is acting unreasonably in refusing to agree to that request to provide a service as a Commissioner Requested Service

5. A direction in accordance with this paragraph is a direction that the Licensee’s refusal to provide a service as a Commissioner Requested Service in response to a request made under paragraph 3(b) is unreasonable.

6. The Licensee shall give Monitor not less than [28] days’ notice of the expiry of any contractual obligation pursuant to which it is required to provide a Commissioner Requested Service to a Commissioner for which no extension or renewal has been agreed.

7. If any contractual obligation of a Licensee to provide a Commissioner Requested Service expires without extension or renewal having been agreed between the Licensee and the Commissioner who is a party to the contract, the Licensee shall continue to provide that service on the terms of the contract (save as agreed with that Commissioner), and the service shall continue to be a Commissioner Requested
Section 1 – General Conditions

Service, for the period from the expiry of the contractual obligation until Monitor issues either:

(a) a direction of the sort referred to in paragraph 8, or

(b) a notice in writing to the Licensee stating that it has decided not to issue such a direction.

8. If, during the period of a contractual or other legally enforceable obligation to provide a Commissioner Requested Service, Monitor issues to the Licensee a direction in writing to continue providing that service for a period specified in the direction, then for that period the service shall continue to be a Commissioner Requested Service.

9. No service which the Licensee is subject to a contractual or other legally enforceable obligation to provide shall be regarded as a Commissioner Requested Service and, as a consequence, no Condition in Section 5 shall be of any application, during any period for which there is in force a direction in writing by Monitor given for the purposes of this condition and of any equivalent condition in any other current licence issued under the 2012 Act stating that no health care service provided for the purposes of the NHS is to be regarded as a Commissioner Requested Service.

10. A service shall cease to be a Commissioner Requested Service if:

(a) all current Commissioners of that service as a Commissioner Requested Service agree in writing that there is no longer any need for the service to be a Commissioner Requested Service, and Monitor has issued a determination in writing that the service is no longer a Commissioner Requested Service, or

(b) Monitor has issued a determination in writing that the service is no longer a Commissioner Requested Service; or

(c) it is a Commissioner Requested Service by virtue only of paragraph 2(a) above and 3 years have elapsed since the commencement of this Licence; or

(d) it is a Commissioner Requested Service by virtue only of paragraph 2(b) above and either 3 years have elapsed since 1 April 2013 or 1 year has elapsed since the commencement of this Licence, whichever is the later; or

(e) the contractual obligation pursuant to which the service is provided has expired and Monitor has issued a notice pursuant to paragraph 7(b) in relation to the service; or
Section 1 – General Conditions

(f) the period specified in a direction by Monitor of the sort referred to in paragraph 8 in relation to the service has expired.

11. The Licensee shall make available free of charge to any person who requests it a statement in writing setting out the description and quantity of services which it is under a contractual or other legally enforceable obligation to provide as Commissioner Requested Services.

12. Within [28] days of every occasion on which there is a change in the description or quantity of the services which the Licensee is under a contractual or other legally enforceable obligation to provide as Commissioner Requested Services, the Licensee shall provide to Monitor in writing a notice setting out the description and quantity of all the services it is obliged to provide as Commissioner Requested Services.

13. Unless it is proposes to cease providing the service, the Licensee shall not make any application to Monitor for a determination in accordance with paragraph 10(b):

(a) in the case of a service which is a Commissioner Requested Service by virtue only of paragraph 2(a) above, in the period of 3 years since the commencement of this Licence or

(b) in the case of a service which is a Commissioner Requested Service by virtue only of paragraph 2(b), in the period until the later of 1 April 2016 or 1 year from the commencement of this Licence.

14. In this Condition “NHS contract” has the meaning given to that term in Section 9 of the 2006 Act.
Section 2 – Pricing

Condition P1 – Recording of information

1. If required in writing by Monitor, and only in relation to periods from the date of that requirement, the Licensee shall:

   (a) obtain, record and maintain sufficient information about the costs which it expends in the course of providing services for the purposes of the NHS and other relevant information, and

   (b) establish, maintain and apply such systems and methods for the obtaining, recording and maintaining of such information about those costs and other relevant information,

   as are necessary to enable it to comply with the following paragraphs of this Condition.

2. From the time of publication by Monitor of Approved Reporting Currencies the Licensee shall maintain records of its costs and of other relevant information broken down in accordance with those Currencies by allocating to a record for each such Currency all costs expended by the Licensee in providing health care services for the purposes of the NHS within that Currency and by similarly treating other relevant information.

3. In the allocation of costs and other relevant information to Approved Reporting Currencies in accordance with paragraph 2 the Licensee shall use the cost allocation methodology and procedures relating to other relevant information set out in the Approved Guidance.

4. If the Licensee uses sub-contractors in the provision of health care services for the purposes of the NHS, to the extent that it is required to do so in writing by Monitor the Licensee shall procure that each of those sub-contractors:

   (a) obtains, records and maintains information about the costs which it expends in the course of providing services as sub-contractor to the Licensee, and establishes, maintains and applies systems and methods for the obtaining, recording and maintaining of that information, in a manner that complies with paragraphs 2 and 3 of this Condition, and

   (b) provides that information to Monitor in a timely manner.

5. Records required to be maintained by this Condition shall be kept for not less than six years.
Section 2 – Pricing

6. In this Condition:

<table>
<thead>
<tr>
<th>“the Approved Guidance”</th>
<th>means such guidance on the obtaining, recording and maintaining of information about costs and on the breaking down and allocation of costs by reference to Approved Reporting Currencies as may be published by Monitor;</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Approved Reporting Currencies”</td>
<td>means such categories of cost and other relevant information as may be published by Monitor;</td>
</tr>
<tr>
<td>“other relevant information”</td>
<td>means such information, which may include quality and outcomes data, as may be required by Monitor for the purpose of its functions under Chapter 4 (Pricing) in Part 3 of the 2012 Act.</td>
</tr>
</tbody>
</table>
Section 2 – Pricing

Condition P2 – Provision of information

1. Subject to paragraph 3, and without prejudice to the generality of Condition G1, the Licensee shall furnish to Monitor such information and documents, and shall prepare or procure and furnish to Monitor such reports, as Monitor may require for the purpose of performing its functions under Chapter 4 in Part 3 of the 2012 Act.

2. Information, documents and reports required to be furnished under this Condition shall be furnished in such manner, in such form, at such place and at such times as Monitor may require.

3. In furnishing information documents and reports pursuant to paragraphs 1 and 2 the Licensee shall take all reasonable steps to ensure that:

(a) in the case of information or a report, it is accurate, complete and not misleading;

(b) in the case of a document, it is a true copy of the document requested; and

4. This Condition shall not require the Licensee to furnish any information, documents or reports which it could not be compelled to produce or give in evidence in civil proceedings before a court because of legal professional privilege.
Section 2 – Pricing

Condition P3 – Assurance report on submissions to Monitor

1. If required in writing by Monitor the Licensee shall, as soon as reasonably practicable, obtain and submit to Monitor an assurance report in relation to a submission of the sort described in paragraph 2 which complies with the requirements of paragraph 3.

2. The descriptions of submissions in relation to which a report may be required under paragraph 1 are:

(a) submissions of information furnished to Monitor pursuant to Condition P2, and

(b) submissions of information to third parties designated by Monitor as persons from or through whom cost information may be obtained for the purposes of setting or verifying the National Tariff or of developing non-tariff pricing guidance.

3. An assurance report shall meet the requirements of this paragraph if all of the following conditions are met:

(a) it is prepared by a person approved in writing by Monitor or qualified to act as auditor of an NHS foundation trust in accordance with paragraph 23(4) in Schedule 7 to the 2006 Act;

(b) it expresses a view on whether the submission to which it relates:

   (i) is based on cost records which have been maintained in a manner which complies with paragraph 2 in Condition P1;

   (ii) is based on costs which have been analysed in a manner which complies with paragraph 3 in Condition P1, and

   (iii) provides a true and fair assessment of the information it contains.
Section 2 – Pricing

Condition P4 – Compliance with the National Tariff

1. Except as approved in writing by Monitor, the Licensee shall only provide health care services for the purpose of the NHS at prices which comply with, or are determined in accordance with, the national tariff published by Monitor, in accordance with section 116 of the 2012 Act.

2. Without prejudice to the generality of paragraph 1, except as approved in writing by Monitor, the Licensee shall comply with the rules, and apply the methods, concerning charging for the provision of health care services for the purposes of the NHS contained in the national tariff published by Monitor in accordance with, section 116 of the 2012 Act, wherever applicable.
Section 2 – Pricing

**Condition P5 – Constructive engagement concerning local tariff modifications**

1. The Licensee shall engage constructively with Commissioners, with a view to reaching agreement as provided in section 124 of the 2012 Act, in any case in which it is of the view that the price payable for the provision of a service for the purposes of the NHS in certain circumstances or areas should be the price determined in accordance with the national tariff for that service subject to modifications.
Condition C1 - The right of patients to make choices

1. Subsequent to a person becoming a patient of the Licensee and for as long as he or she remains such a patient, the Licensee shall ensure that at every point where that person has a choice of provider under the NHS Constitution or a choice of provider conferred locally by Commissioners, he or she is notified of that choice and told where information about that choice can be found.

2. Information and advice about patient choice of provider made available by the Licensee shall not be misleading.

3. Without prejudice to paragraph 2, information and advice about patient choice of provider made available by the Licensee shall not unfairly favour one provider over another and shall be presented in a manner that, as far as reasonably practicable, assists patients in making well informed choices between providers of treatments or other health care services.

4. In the conduct of any activities, and in the provision of any material, for the purpose of promoting itself as a provider of health care services for the purposes of the NHS the Licensee shall not offer or give gifts, benefits in kind, or pecuniary or other advantages to clinicians, other health professionals, Commissioners or their administrative or other staff as inducements to refer patients or commission services.
Condition C2 – Competition oversight

1. The Licensee shall not:

   (a) enter into or maintain any agreement or other arrangement which has the object or which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS, or

   (b) engage in any other conduct which has (or would be likely to have) the effect of preventing, restricting or distorting competition in the provision of health care services for the purposes of the NHS,

   to the extent that it is against the interests of people who use health care services.
Section 4 – Integrated care

Section 4 – Integrated care

Condition IC1 – Provision of integrated care

1. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of such services by others with a view to achieving one or more of the objectives referred to in paragraph 4.

2. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling its provision of health care services for the purposes of the NHS to be integrated with the provision of health-related services or social care services by others with a view to achieving one or more of the objectives referred to in paragraph 4.

3. The Licensee shall not do anything that reasonably would be regarded as against the interests of people who use health care services by being detrimental to enabling it to co-operate with other providers of health care services for the purposes of the NHS with a view to achieving one or more of the objectives referred to in paragraph 4.

4. The objectives referred to in paragraphs 1, 2 and 3 are:

   (a) improving the quality of health care services provided for the purposes of the NHS (including the outcomes that are achieved from their provision) or the efficiency of their provision,

   (b) reducing inequalities between persons with respect to their ability to access those services, and

   (c) reducing inequalities between persons with respect to the outcomes achieved for them by the provision of those services.

5. The Licensee shall have regard to such guidance as may have been issued by Monitor from time to time concerning actions or behaviours that might reasonably be regarded as against the interests of people who use health care services for the purposes of paragraphs 1, 2 or 3 of this Condition.
Section 5 – Continuity of Services

Section 5 – Continuity of Services

Condition CoS1 – Continuing provision of Commissioner Requested Services

1. The Licensee shall not cease to provide, or materially alter the specification or means of provision of, any Commissioner Requested Service otherwise than in accordance with the following paragraphs of this Condition.

2. If, during the period of a contractual or other legally enforceable obligation to provide a Commissioner Requested Service, or during any period when this condition applies by virtue of Condition G9(1)(b), Monitor issues to the Licensee a direction in writing to continue providing that service for a period specified in the direction, then the Licensee shall provide the service for that period in accordance with the direction.

3. The Licensee shall not materially alter the specification or means of provision of any Commissioner Requested Service except:

   (a) with the agreement in writing of all Commissioners to which the Licensee is required by a contractual or other legally enforceable obligation to provide the service as a Commissioner Requested Service; or

   (b) at any time when this condition applies by virtue of Condition G9(1)(b), with the agreement in writing of all Commissioners to which the Licensee provides, or may be requested to provide, the service as a Commissioner Requested Service; or

   (c) if required to do so by, or in accordance with the terms of its authorisation by, any body having responsibility pursuant to statute for regulating one or more aspects of the provision of health care services in England and which has been designated by Monitor for the purposes of this condition and of equivalent conditions in other licences granted under the 2012 Act.

4. If the specification or means of provision of a Commissioner Requested Service is altered as provided in paragraph 3 the Licensee, within [28] days of the alteration, shall give to Monitor notice in writing of the occurrence of the alteration with a summary of its nature.

5. For the purposes of this Condition an alteration to the specification or means of provision of any Commissioner Requested Service is material if it involves the delivery
Section 5 – Continuity of Services

or provision of that service in a manner which differs from the manner specified and described in:

(a) the contract in which it was first required to be provided to a Commissioner at or following the coming into effect of this Condition; or

(b) if there has been an alteration pursuant to paragraph 3, the document in which it was specified on the coming into effect of that alteration; or

(c) at any time when this Condition applies by virtue of Condition G9(1)(b), the contract, or NHS contract, by which it was required to be provided immediately before the commencement of this Licence or the Licensee’s authorisation, as the case may be.
Section 5 – Continuity of Services

Condition CoS2 – Restriction on the disposal of assets

1. The Licensee shall establish, maintain and keep up to date, an asset register which complies with paragraphs 2 and 3 of this Condition (“the Asset Register”)

2. The Asset Register shall list every relevant asset used by the Licensee for the provision of Commissioner Requested Services.

3. The Asset Register shall be established, maintained and kept up to date in a manner that reasonably would be regarded as both adequate and professional.

4. The obligations in paragraphs 5 to 8 shall apply to the Licensee if Monitor has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern.

5. The Licensee shall not dispose of, or relinquish control over, any relevant asset except:

(a) with the consent in writing of Monitor, and

(b) in accordance with the paragraphs 6 to 8 of this Condition.

6. The Licensee shall furnish Monitor with such information as Monitor may request relating to any proposal by the Licensee to dispose of, or relinquish control over, any relevant asset.

7. Where consent by Monitor for the purpose of paragraph 5(a) is subject to conditions, the Licensee shall comply with those conditions.

8. Paragraph 5(a) of this Condition shall not prevent the Licensee from disposing of, or relinquishing control over, any relevant asset where:

(a) Monitor has issued a general consent for the purposes of this Condition (whether or not subject to conditions) in relation to:

(i) transactions of a specified description; or

(ii) the disposal of or relinquishment of control over relevant assets of a specified description, and

the transaction or the relevant assets are of a description to which the consent applies and the disposal, or relinquishment of control, is in accordance with any conditions to which the consent is subject; or
Section 5 – Continuity of Services

(b) the Licensee is required by the Care Quality Commission to dispose of a relevant asset.

9. In this Condition:

<table>
<thead>
<tr>
<th>“disposal”</th>
<th>means any of the following:</th>
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<tr>
<td></td>
<td>(a) a transfer, whether legal or equitable, of the whole or any part</td>
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<td>of an asset (whether or not for value) to a person other than the Licensee; or</td>
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<td></td>
<td>(b) a grant, whether legal or equitable, of a lease, licence, or loan of (or the grant of</td>
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<td></td>
<td>any other right of possession in relation to) that asset; or</td>
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<td></td>
<td>(c) the grant, whether legal or equitable, of any mortgage, charge,</td>
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<td>or other form of security over that asset; or</td>
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<td>(d) if the asset is an interest in land, any transaction or event that is</td>
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<td></td>
<td>capable under any enactment or rule of law of affecting the title to a registered</td>
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<tr>
<td></td>
<td>interest in that land, on the assumption that the title is registered,</td>
</tr>
<tr>
<td></td>
<td>and references to “dispose” are to be read accordingly;</td>
</tr>
</tbody>
</table>

| “relevant asset”                  | means any item of property, including buildings, interests in land,                         |
|                                   | equipment (including rights, licenses and consents relating to its use), without which      |
|                                   | the Licensee’s ability to meet its obligations to provide Commissioner Requested Services |
|                                   | would reasonably be regarded as materially prejudiced;                                      |

| “relinquishment of control”       | includes entering into any agreement or arrangement under which control of the asset is    |
|                                   | not, or ceases to be, under the sole management of the Licensee, and “relinquish” and related |
|                                   | expressions are to be read accordingly.                                                   |

10. The Licensee shall have regard to such guidance as may be issued from time to time by Monitor regarding:

(a) the manner in which asset registers should be established, maintained and updated, and
Section 5 – Continuity of Services

(b) property, including buildings, interests in land, intellectual property rights and equipment, without which a licence holder’s ability to provide Commissioner Requested Services should be regarded as materially prejudiced.
1. The Licensee shall at all times adopt and apply systems and standards of corporate governance and of financial management which reasonably would be regarded as:

(a) suitable for a provider of the Commissioner Requested Services provided by the Licensee, and

(b) providing reasonable safeguards against the risk of the Licensee being unable to carry on as a going concern.

2. In its determination of the systems and standards to adopt for the purpose of paragraph 1, and in the application of those systems and standards, the Licensee shall have regard to:

(a) such guidance as Monitor may issue from time to time concerning systems and standards of corporate governance and financial management;

(b) the Licensee’s rating using the risk rating methodology published by Monitor from time to time, and

(c) the desirability of that rating being not less than the level regarded by Monitor as acceptable under the provisions of that methodology.
Section 5 – Continuity of Services

Condition CoS4 – Undertaking from the ultimate controller

1. The Licensee shall procure from each company or other person which the Licensee knows or reasonably ought to know is at any time its ultimate controller, a legally enforceable undertaking in favour of the Licensee, in the form specified by Monitor, that the ultimate controller (“the Covenantor”):

   (a) will refrain for any action, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will refrain from any action, which would be likely to cause the Licensee to be in contravention of any of its obligations under the 2012 Act or this Licence, and

   (b) will give to the Licensee, and will procure that any person which is a subsidiary of, or which is controlled by, the Covenantor (other than the Licensee and its subsidiaries) will give to the Licensee, all such information in its possession or control as may be necessary to enable the Licensee to comply fully with its obligations under this Licence to provide information to Monitor.

2. The Licensee shall obtain any undertaking required to be procured for the purpose of paragraph 1 within 7 days of a company or other person becoming an ultimate controller of the Licensee and shall ensure that any such undertaking remains in force for as long as the Covenantor remains the ultimate controller of the Licensee.

3. The Licensee shall:

   (a) deliver to Monitor a copy of each such undertaking within seven days of obtaining it;

   (b) inform Monitor immediately in writing if any Director, secretary or other officer of the Licensee becomes aware that any such undertaking has ceased to be legally enforceable or that its terms have been breached, and

   (c) comply with any request which may be made by Monitor to enforce any such undertaking.

4. For the purpose of this Condition, subject to paragraph 5, a person (whether an individual or a body corporate) is an ultimate controller of the Licensee if:

   (a) directly, or indirectly, the Licensee can be required to act in accordance with the instructions of that person acting alone or in concert with others, and
Section 5 – Continuity of Services

(b) that person cannot be required to act in accordance with the instructions of another person acting alone or in concert with others.

5. A person is not an ultimate controller if they are:

(a) a health service body, within the meaning of section 9 of the 2006 Act;

(b) a Governor or Director of the Licensee and the Licensee is an NHS foundation trust;

(c) any Director of the Licensee who does not, alone or in association with others, have a controlling interest in the ownership of the Licensee and the Licensee is a body corporate; or

(d) a trustee of the Licensee and the Licensee is a charity.
Section 5 – Continuity of Services

**Condition CoS5 – Risk pool levy**

1. The Licensee shall pay to Monitor any sums required to be paid in consequence of any requirement imposed on providers under section 135(2) of the 2012 Act, including sums payable by way of levy imposed under section 139(1) and any interest payable under section 143(10), by the dates by which they are required to be paid.

2. In the event that no date has been clearly determined by which a sum referred to in paragraph 1 is required to be paid, that sum shall be paid within 28 days of being demanded in writing by Monitor.
Section 5 – Continuity of Services

Condition CoS6 – Co-operation in the event of financial stress

1. The obligations in paragraph 2 shall apply if Monitor has given notice in writing to the Licensee that it is concerned about the ability of the Licensee to carry on as a going concern.

2. When this paragraph applies the Licensee shall:

   (a) provide such information as Monitor may direct to Commissioners and to such other persons as Monitor may direct;

   (b) allow such persons as Monitor may appoint to enter premises owned or controlled by the Licensee and to inspect the premises and anything on them, and

   (c) co-operate with such persons as Monitor may appoint to assist in the management of the Licensee’s affairs, business and property.
1. The Licensee shall at all times act in a manner calculated to secure that it has, or has access to, the Required Resources.

2. The Licensee shall not enter into any agreement or undertake any activity which creates a material risk that the Required Resources will not be available to the Licensee.

3. The Licensee, not later than two months from the end of each Financial Year, shall submit to Monitor a certificate as to the availability of the Required Resources for the period of 12 months commencing on the date of the certificate, in one of the following forms:

   (a) “After making enquiries the Directors of the Licensee have a reasonable expectation that the Licensee will have the Required Resources available to it after taking account distributions which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate.”

   (b) “After making enquiries the Directors of the Licensee have a reasonable expectation, subject to what is explained below, that the Licensee will have the Required Resources available to it after taking into account in particular (but without limitation) any distribution which might reasonably be expected to be declared or paid for the period of 12 months referred to in this certificate. However, they would like to draw attention to the following factors which may cast doubt on the ability of the Licensee to provide Commissioner Requested Services”.

   (c) “In the opinion of the Directors of the Licensee, the Licensee will not have the Required Resources available to it for the period of 12 months referred to in this certificate”.

4. The Licensee shall submit to Monitor with that certificate a statement of the main factors which the Directors of the Licensee have taken into account in issuing that certificate.

5. The statement submitted to Monitor in accordance with paragraph 4 shall be approved by a resolution of the board of Directors of the Licensee and signed by a Director of the Licensee pursuant to that resolution.
6. The Licensee shall inform Monitor immediately if the Directors of the Licensee become aware of any circumstance that causes them to no longer have the reasonable expectation referred to in the most recent certificate given under paragraph 3.

7. The Licensee shall publish each certificate provided for in paragraph 3 in such a manner as will enable any person having an interest in it to have ready access to it.

8. In this Condition:

<table>
<thead>
<tr>
<th><strong>“distribution”</strong></th>
<th>includes the payment of dividends or similar payments on share capital and the payment of interest or similar payments on public dividend capital and the repayment of capital;</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>“Financial Year”</strong></td>
<td>means the period of twelve months over which the Licensee normally prepares its accounts;</td>
</tr>
<tr>
<td><strong>“Required Resources”</strong></td>
<td>means such:&lt;br&gt;(a) management resources,&lt;br&gt;(b) financial resources and financial facilities,&lt;br&gt;(c) personnel,&lt;br&gt;(d) physical and other assets including rights, licences and consents relating to their use, and&lt;br&gt;(e) working capital as reasonably would be regarded as sufficient to enable the Licensee at all times to provide the Commissioner Requested Services.</td>
</tr>
</tbody>
</table>
Section 6 – NHS Foundation Trust Conditions

Section 6 – NHS Foundation Trust Conditions

Condition FT1 – Information to update the register of NHS foundation trusts

1. The obligations in the following paragraphs of this Condition apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.

2. The Licensee shall ensure that Monitor has available to it written and electronic copies of the following documents:

   (a) the current version of Licensee’s constitution;

   (b) the Licensee’s most recently published annual accounts and any report of the auditor on them, and

   (c) the Licensee’s most recently published annual report,

   and for that purpose shall provide to Monitor written and electronic copies of any document establishing or amending its constitution within 28 days of being adopted and of the documents referred to in sub-paragraphs (b) and (c) within 28 days of being published.

3. Subject to paragraph 4, the Licensee shall provide to Monitor written and electronic copies of any document that is required by Monitor for the purpose of Section 39 of the 2006 Act within 28 days of the receipt of the original document by the Licensee.

4. The obligation in paragraph 3 shall not apply to:

   (a) any document provided pursuant to paragraph 2;

   (b) any document originating from Monitor; or

   (c) any document required by law to be provided to Monitor by another person.

5. The Licensee shall comply with any direction issued by Monitor concerning the format in which electronic copies of documents are to be made available or provided.

6. When submitting a document to Monitor for the purposes of this Condition, the Licensee shall provide to Monitor a short written statement describing the document and specifying its electronic format and advising Monitor that the document is being sent for
Section 6 – NHS Foundation Trust Conditions

the purpose of updating the register of NHS foundation trusts maintained in accordance with section 39 of the 2006 Act.
Condition FT2 – Payment to Monitor in respect of registration and related costs

1. The obligations in the following paragraph of this Condition apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.

2. Whenever Monitor determines in accordance with section 50 of the 2006 Act that the Licensee must pay to Monitor a fee in respect of Monitor’s exercise of its functions under sections 39 and 39A of that Act the Licensee shall pay that fee to Monitor within 28 days of the fee being notified to the Licensee by Monitor in writing.
Section 6 – NHS Foundation Trust Conditions

Condition FT3 – Provision of information to advisory panel

1. The obligation in the following paragraph of this Condition applies if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.

2. The Licensee shall comply with any request for information or advice made of it under Section 39A(5) of the 2006 Act.
Section 6 – NHS Foundation Trust Conditions

**Condition FT4 – NHS foundation trust governance arrangements**

1. This condition shall apply if the Licensee is an NHS foundation trust, without prejudice to the generality of the other conditions in this Licence.

2. The Licensee shall apply those principles, systems and standards of good corporate governance which reasonably would be regarded as appropriate for a supplier of health care services to the NHS.

3. Without prejudice to the generality of paragraph 2 and to the generality of General Condition 5, the Licensee shall:
   
   (a) have regard to such guidance on good corporate governance as may be issued by Monitor from time to time; and
   
   (b) comply with the following paragraphs of this Condition.

4. The Licensee shall establish and implement:
   
   (a) effective board and committee structures;
   
   (b) clear responsibilities for its Board, for committees reporting to the Board and for staff reporting to the Board and those committees; and
   
   (c) clear reporting lines and accountabilities throughout its organisation.

5. The Licensee shall establish and effectively implement systems and/or processes:
   
   (a) to ensure compliance with the Licensee’s duty to operate efficiently, economically and effectively;
   
   (b) for timely and effective scrutiny and oversight by the Board of the Licensee’s operations;
   
   (c) to ensure compliance with health care standards binding on the Licensee including but not restricted to standards specified by the Secretary of State, the Care Quality Commission, the NHS Commissioning Board and statutory regulators of health care professions;
Section 6 – NHS Foundation Trust Conditions

(d) for effective financial decision-making, management and control (including but not restricted to appropriate systems and/or processes to ensure the Licensee’s ability to continue as a going concern);

(e) to obtain and disseminate accurate, comprehensive, timely and up to date information for Board and Committee decision-making;

(f) to identify and manage (including but not restricted to manage through forward plans) material risks to compliance with the Conditions of its Licence;

(g) to generate and monitor delivery of business plans (including any changes to such plans) and to receive internal and where appropriate external assurance on such plans and their delivery; and

(h) to ensure compliance with all applicable legal requirements.

6. The systems and/or processes referred to in paragraph 5 should include but not be restricted to systems and/or processes to ensure:

(a) that there is sufficient capability at Board level to provide effective organisational leadership on the quality of care provided;

(b) that the Board’s planning and decision-making processes take timely and appropriate account of quality of care considerations;

(c) the collection of accurate, comprehensive, timely and up to date information on quality of care;

(d) that the Board receives and takes into account accurate, comprehensive, timely and up to date information on quality of care;

(e) that the Licensee including its Board actively engages on quality of care with patients, staff and other relevant stakeholders and takes into account as appropriate views and information from these sources; and

(f) that there is clear accountability for quality of care throughout the Licensee’s organisation including but not restricted to systems and/or processes for escalating and resolving quality issues including escalating them to the Board where appropriate.
7. The Licensee shall ensure the existence and effective operation of systems to ensure that it has in place personnel on the Board, reporting to the Board and within the rest of the Licensee’s organisation who are sufficient in number and appropriately qualified to ensure compliance with the Conditions of this Licence.

8. The Licensee shall submit to Monitor within three months of the end of each financial year:

(a) a corporate governance statement by and on behalf of its Board confirming compliance with this Condition as at the date of the statement and anticipated compliance with this Condition for the next financial year, specifying any risks to compliance with this Condition in the next financial year and any actions it proposes to take to manage such risks; and

(b) if required in writing by Monitor, a statement from its auditors either:

   (i) confirming that, in their view, after making reasonable enquiries, the Licensee has taken all the actions set out in its corporate governance statement applicable to the past financial year, or

   (ii) setting out the areas where, in their view, after making reasonable enquiries, the Licensee has failed to take the actions set out in its corporate governance statement applicable to the past financial year.
Section 7 – Interpretation and Definitions

Condition D1 – Interpretation and Definitions

1. In this Licence, except where the context requires otherwise, words or expressions set out in the left hand column of the following table have the meaning set out next to them in the right hand column of the table.

<table>
<thead>
<tr>
<th>“the 2006 Act”</th>
<th>the National Health Service Act 2006 c.41;</th>
</tr>
</thead>
<tbody>
<tr>
<td>“the 2008 Act”</td>
<td>the Health and Social Care Act 2008 c.14;</td>
</tr>
<tr>
<td>“the 2009 Act”</td>
<td>the Health Act 2009 c.21;</td>
</tr>
<tr>
<td>“the 2012 Act”</td>
<td>the Health and Social Care Act 2012 c.7;</td>
</tr>
<tr>
<td>“the Care Quality Commission”</td>
<td>the Care Quality Commission established under section 1 of the 2008 Act;</td>
</tr>
<tr>
<td>“clinical commissioning group”</td>
<td>a body corporate established pursuant to section 1F and Chapter A of Part 2 of the 2006 Act;</td>
</tr>
<tr>
<td>“Commissioner Requested Service”</td>
<td>a service of the sort described in paragraph 2 or 3 of condition G9 which has not ceased to be such a service in accordance with paragraph 9 of that condition;</td>
</tr>
<tr>
<td>“Commissioners”</td>
<td>includes the NHS Commissioning Board and any clinical commissioning group;</td>
</tr>
<tr>
<td>“Director”</td>
<td>includes any person who, in any organisation, performs the functions of, or functions equivalent or similar to those of, a director of:</td>
</tr>
<tr>
<td>(i) an NHS foundation trust, or</td>
<td></td>
</tr>
<tr>
<td>(ii) a company constituted under the Companies Act 2006;</td>
<td></td>
</tr>
<tr>
<td>“Governor”</td>
<td>includes any person who, in any organisation, performs the functions of, or functions equivalent or</td>
</tr>
</tbody>
</table>
similar to those of, a Governor of an NHS foundation trust as specified by statute;

| “the NHS Acts” | the 2006 Act, the 2008 Act, the 2009 Act and the 2012 Act; |
| “NHS Commissioning Board” | the body corporate established under section 1E of, and Schedule A1 to, the 2006 Act; |
| “NHS foundation trust” | a public benefit corporation established pursuant to section 30 of, and Schedule 7 to, the 2006 Act. |

2. Any reference in this Licence to a statutory body shall be taken, unless the contrary is indicated, to be a reference also to any successor to that body.

3. Unless the context requires otherwise, words or expressions which are defined in the 2012 Act shall have the same meaning for the purpose of this Licence as they have for the purpose of that Act.

4. Any reference in the Licence to any provision of a statute, statutory instrument or other regulation is a reference, unless the context requires otherwise, to that provision as currently amended.
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12 June 2013

Mr Mike Viggers
Chair
Western Sussex Hospitals NHS Trust
Worthing Hospital
Lyndhurst Road
Worthing
West Sussex
BN11 2DH

Dear Mike

Application for NHS foundation trust status

I wrote to you today under separate cover in relation to the Trust’s authorisation as an NHS foundation trust. This letter deals with certain matters which emerged during the scrutiny of your application.

Quality Governance

Monitor’s Board found that the Trust meets the criteria for authorisation as set out in section 5.3.2.4 of “Applying for NHS foundation trust status: A guide for applicants” dated 12 April 2013 in respect of its Quality Governance arrangements. In arriving at its decision to authorise the Trust, Monitor’s Board took into account a number of changes that have recently been implemented to enhance quality governance arrangements at the Trust. It is important that the Trust continues to embed these changes.

As a consequence, Monitor’s Board expects that the Trust Board provide Monitor with formal assurance, in accordance with the timeframes set out below, that progress has continued to be made in the following areas:

- Full implementation of the cost improvement plan (CIP) dashboard that the Trust has developed for assessing the post implementation impact of CIPs;
- Embedding of recent changes to the role and responsibilities of the Quality and Risk Committee; and
- Addressing and embedding of recommendations that have been made in recent external reviews commissioned by the Trust into its governance of mortality and arrangements for reducing fractured neck of femur mortality.

Reporting to Monitor
We understand that you are already implementing improvements in the areas set out above. We expect your Board to provide formal assurance to Monitor that each of these matters has been addressed.

To enable us to evaluate this, we expect you as Chair of the Trust to report back as outlined below:

1. Report the actions the Trust has undertaken to evaluate the effectiveness of the enhanced CIP quality monitoring process. This should be sent to the Trust’s Monitor relationship team by no later than the due date for Q3, 2013/14 monitoring (expected to be 31 January 2014).

2. Provide a report covering the independent assessment of:

   • the effectiveness of recent improvements to the Quality and Risk Committee; and
   • the successful implementation of the recommendations from recent external reviews into the Trust’s governance of mortality and arrangements for reducing fractured neck of femur mortality.

   This report should be provided to the Trust’s Monitor relationship team by no later than the due date for Q1, 2014/15 monitoring (expected to be 30 June 2014).

The above is without prejudice to the requirement on the Trust to ensure that it is compliant with all of the conditions of its licence and to the reporting requirements set out in the Compliance Framework 2013/14.

Notwithstanding these important concerns, we should like to congratulate you and your team on the hard work and your successful application. We wish you well for the future.

Yours sincerely

David Bennett
Chair & Chief Executive

cc: Marianne Griffiths – Chief Executive
    David Flory – Chief Executive, NHS Trust Development Authority
FOR INFORMATION

REGISTER OF DIRECTORS

1.00 INTRODUCTION

1.01 This paper presents for information the Register of Directors which the Trust is required to hold.

2.00 BOARD OF DIRECTORS

2.01 It is a requirement for each Foundation Trust to have a Board of Directors, with the duties and powers set out within the Constitution. There are Non-executive Directors, including the Chairman, and Executives. It is a requirement that the Non-executives are in a voting majority on the Board.

2.02 The Constitution provides that the Board of Western Sussex Hospitals NHS Foundation Trust comprises the Chairman, six Non-executives and six Executives (including the Chief Executive). At the present time the membership of the Board is the Chairman, five Non-executives and six Executives (including the Chief Executive) but, as required by the Code of Governance, the Chairman has a casting vote such that there is a majority of Non-executive votes on the Board. It is intended to recruit to the Non-executive vacancy on the Board.

2.03 The process for appointing the Directors is set out within the Model Core Constitution. This process has been implemented by the preceding meetings of the Council of Governors and the Nominations & Remuneration Committee of the Board of Directors, such that the Board is now in place for this Foundation Trust.

2.04 The Constitution sets out (at clauses 31.1 to 31.3) the criteria for eligibility for appointment as a Director. These are reflected in the criteria for “fit and proper person” status within the NHS Provider Licence, though those criteria include an additional requirement relating to disqualification from company directorships. All Directors have confirmed that none of the disqualifying criteria apply to them.

3.00 REGISTER OF DIRECTORS

3.01 The Constitution requires at clause 36.4 that the Trust shall have a Register of Directors. The content of the Register is not prescribed but the attached document has been developed to include Directors’ names, job title and, for Non-executives, date of appointment and term of office. The Register also confirms compliance with the eligibility criteria for Directorship.

3.02 The Register will be held and maintained by the Company Secretary. It is a requirement of the Constitution (clause 38.1) that the register is made available for inspection by members of the public. The Register will be published on the Trust’s website, alongside Directors’ biographies and other information about the Board.
4.00 RECOMMENDATION

4.01 The Board of Directors is asked to note the Register of Directors.
## REGISTER OF DIRECTORS

<table>
<thead>
<tr>
<th>Director</th>
<th>Role Title</th>
<th>Date of Appointment**</th>
<th>Date of End of Term of Office</th>
<th>Eligible for Directorship*</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-executives</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mike Viggers</td>
<td>Chairman (Non-executive)</td>
<td>12.1.12</td>
<td>11.1.16</td>
<td>Yes</td>
</tr>
<tr>
<td>Bill Brown</td>
<td>Non-executive Director</td>
<td>1.3.11</td>
<td>28.2.15</td>
<td>Yes</td>
</tr>
<tr>
<td>Joanna Crane</td>
<td>Non-executive Director</td>
<td>2.4.13</td>
<td>1.4.17</td>
<td>Yes</td>
</tr>
<tr>
<td>Tony Clark</td>
<td>Non-executive Director</td>
<td>2.4.13</td>
<td>1.4.17</td>
<td>Yes</td>
</tr>
<tr>
<td>Jon Furmston</td>
<td>Non-executive Director</td>
<td>2.4.13</td>
<td>1.4.17</td>
<td>Yes</td>
</tr>
<tr>
<td>Martin Phillips</td>
<td>Non-executive Director</td>
<td>2.4.10</td>
<td>8.7.14</td>
<td>Yes</td>
</tr>
<tr>
<td>Vacant</td>
<td>Non-executive Director</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td><strong>Executives</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marianne Griffiths</td>
<td>Chief Executive</td>
<td>1.4.09</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Dr Phillip Barnes</td>
<td>Medical Director</td>
<td>21.9.09</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Denise Farmer</td>
<td>Director of Organisational Development &amp; Leadership</td>
<td>1.4.09</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Jane Farrell</td>
<td>Chief Operating Officer and Deputy Chief Executive</td>
<td>1.4.09</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Spencer Prosser</td>
<td>Finance Director and Deputy Chief Executive</td>
<td>14.9.09</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Cathy Stone</td>
<td>Director of Nursing &amp; Patient Safety</td>
<td>1.4.09</td>
<td>N/A</td>
<td>Yes</td>
</tr>
</tbody>
</table>

*Note: the Director has confirmed that he/she meets the eligibility criteria for Directorship as set out in the Constitution and Provider Licence.*

**Note: the most recent date of appointment at Western Sussex Hospitals NHS Trust, including for Non-executive Directors any re-appointment since the establishment of the NHS Trust.

Last updated: June 2013
FOR INFORMATION

REGISTER OF DIRECTORS’ INTERESTS

1.00 INTRODUCTION

1.01 This paper presents for information the Register of Directors’ Interests which the Trust is required to hold.

2.00 REGISTER OF DIRECTORS’ INTERESTS

2.01 It is essential for robust governance that there is openness and transparency in all discussions and decision making. To support this, the Constitution requires Directors to declare certain categories of interests as defined in section 4 of Annex 9. The Annex sets out detail in support of the overall requirement in clause 20 of the Model Core Constitution.

2.02 The requirements of Annex 9 are reflected in the Trust’s Policy on Declaration of Interests, which includes a form to be used for declarations. All Directors were asked to complete such a declaration and their responses have been included in the attached Register of Directors’ Interests. It is not considered that any Directors have material conflicts of interests.

2.03 The Register will be held and maintained by the Company Secretary. Directors will be asked at least annually to update their declarations and are responsible for informing the Company Secretary whenever there are material changes. The Register will be presented to the Board annually.

2.04 It is a requirement of the Constitution (clause 38.1) that the register is made available for inspection by members of the public. The Register will be published on the Trust’s website, alongside Directors’ biographies and other information about the Board. The Register was submitted to Monitor as part of the assessment process.

3.00 RECOMMENDATION

3.01 The Board of Directors is asked to note the Register of Directors’ Interests.
<table>
<thead>
<tr>
<th>Director (date of declaration)</th>
<th>Consultancies and/or direct employment</th>
<th>Fee-paid work</th>
<th>Shareholdings</th>
<th>Fellowships, Trusteeships, memberships of voluntary bodies</th>
<th>Health or social care-related campaigning</th>
<th>Other personal interests</th>
<th>Non-personal (family) interests</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Non-executives</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mike Viggers (26.3.13)</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Bill Brown (22.3.13)</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Joanna Crane (23.3.12)</td>
<td>I work as Head of Development and Performance in Personnel for the European Investment Bank. The EIB may partner with other organisations to finance the construction of hospitals. I do not work in the area involved in such lending, and have no involvement in decision making in that regard.</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>


<table>
<thead>
<tr>
<th>Category of Interests (see Appendix for definitions)</th>
<th>Director (date of declaration)</th>
<th>Consultancies and/or direct employment</th>
<th>Fee-paid work</th>
<th>Shareholdings</th>
<th>Fellowships, Trusteeships, memberships of voluntary bodies</th>
<th>Health or social care-related campaigning</th>
<th>Other personal interests</th>
<th>Non-personal (family) interests</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Tony Clark (21.3.13)</td>
<td>None</td>
<td>Lay Chair for Kent, Surrey and Sussex Deanery</td>
<td>None</td>
<td>Justice of the Peace, Sussex Western Branch</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Jon Furmston (2.4.13)</td>
<td>Employed full-time by BT who have a Division that supplies telecoms and IT services to the NHS. I do not work in the Division that serves the NHS and I am not incentivised by its success</td>
<td>None</td>
<td>BT</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td></td>
<td>Martin Phillips (21.3.13)</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>Magistrate – Sussex Western Bench Employment Specialist - CAB West Sussex Trustee of Relate Brighton and Worthing Independent Remuneration Panel - Adur</td>
<td>None</td>
<td>None</td>
<td>None</td>
</tr>
<tr>
<td>Category of Interests (see Appendix for definitions)</td>
<td>Consultancies and/or direct employment</td>
<td>Fee-paid work</td>
<td>Shareholdings</td>
<td>Fellowships, Trusteeships, memberships of voluntary bodies</td>
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<td></td>
</tr>
<tr>
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<td></td>
</tr>
<tr>
<td><strong>Executives</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Marianne Griffiths (26.3.13)</td>
<td>Director of Eden Consulting. No direct work undertaken.</td>
<td>None</td>
<td>Director and co-owner of Eden Consulting, which works in social care. No direct work undertaken. No connection with the business of the Trust</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Dr Phillip Barnes (25.3.13)</td>
<td>Pool Member, NHS IMAS (no work undertaken in 2012/13) Honorary Consultant Neurologist, King's College Hospitals NHS Foundation Trust</td>
<td>None (two days facilitation work for Deloitte LLP in connection with a proposed acquisition/merger in London, but reimbursement was direct to the Trust)</td>
<td>None</td>
<td>None</td>
<td>Member of the British Medical Association, Faculty of Medical Leadership and Management, Association of British Neurologists</td>
<td>None</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Denise Farmer (25.3.13)</td>
<td>None</td>
<td>None</td>
<td>Director of Strategy Design and Build Ltd</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Jane Farrell (27.3.13)</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>Director (date of declaration)</td>
<td>Consultancies and/or direct employment</td>
<td>Fee-paid work</td>
<td>Shareholdings</td>
<td>Fellowships, Trusteeships, memberships of voluntary bodies</td>
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<td></td>
</tr>
<tr>
<td>---------------------------------</td>
<td>----------------------------------------</td>
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<td></td>
</tr>
<tr>
<td>Spencer Prosser (26.3.13)</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>Wife is employed by Industrial Construction Sussex (ICS) Ltd, which is an industrial cladding company part-owned by her/my brother/brother-in-law. ICS have and may bid as a sub-contractor for work let by the Trust.</td>
<td></td>
</tr>
<tr>
<td>Cathy Stone (12.4.13)</td>
<td>None</td>
<td>None</td>
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<td>None</td>
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<td></td>
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</tbody>
</table>

Last updated: April 2013
APPENDIX – DEFINITIONS OF INTERESTS TO BE DECLARED

Consultancies and/or direct employment:
Any paid consultancy, employment, partnership, directorship or position in (or for) any organisation (particularly health or social care service providers) either directly or indirectly related to the work of the Trust or the NHS generally.

Fee-paid work
Any commissioned or fee-paid work for any organisation (particularly health or social care service providers) either directly or indirectly related to the work of the Trust or the NHS generally

Shareholdings
Any shareholdings or other financial or beneficial interests in a private company or body that may give rise to a conflict of interest.

Fellowships / trusteeships & membership of voluntary bodies:
Any other outside interests which may be relevant to your role as a member of staff to the Trust, e.g. un-remunerated posts, honorary positions and other connections, which may give rise to a conflict of interest or of trust.

Health or social care campaigning
Any affiliation to health or social care-related campaigning organisations or special interest groups

Non-personal interests:
Any relevant and known interests held by your spouse, a close family member, or a member of your household, which may provide a conflict of interest with your position within the Trust, including the interests described above

Interests that should be regarded as "relevant and material" are:

a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
d) A position of authority in a charity or voluntary organisation in the field of health and social care;
e) Any connection with a voluntary or other organisation contracting for NHS services;
f) Research funding/grants that may be received by an individual or his/her department;
g) Interests in pooled funds that are under separate management.
h) Close family relationships with any of the Trust’s advisers, Directors, senior managers or suppliers.
FOR DECISION

STATEMENT OF INDEPENDENCE OF NON-EXECUTIVE DIRECTORS

1.00 INTRODUCTION

1.01 This paper presents for approval a Statement of Independence of Non-executive Directors.

2.00 STATEMENT OF INDEPENDENCE OF NON-EXECUTIVE DIRECTORS

2.01 The Monitor Code of Governance recommends in section A.3 that the Board should include a balance of Executive and Non-executive members, particularly independent Non-executives so that there is sufficient challenge to Executives and any Non-executives who have connections with the Trust. (The balance is subject to the legal requirement for there to be a voting majority of Non-executives on the Board.)

2.02 The Code recommends that the Board should identify the Non-executive Directors which it considers to be independent. This is to be stated in the Trust’s Annual Report but it is good practice to make the statement at the present time, to demonstrate robust governance. The Code sets out the criteria for independence, which are reflected in the attached statement. On the basis of the interests declared by the Non-executive Directors, noted previously by the Board, all are considered to be independent.

3.00 RECOMMENDATION

3.01 The Board of Directors is asked to approve the Statement of Independence of Non-executive Directors.
WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

STATEMENT OF INDEPENDENCE OF NON-EXECUTIVE DIRECTORS

In accordance with clause A.3.1 of the Monitor Code of Governance, the Board of Directors confirms that having reviewed the Declarations of Interests made by all Directors, the Non-executive Directors listed below are independent in character and judgement. In particular, none of the conditions (a) to (g) (which are taken from the Code of Governance) listed below apply in the case of any Non-executive Director.

Chairman
Mike Viggers

Non-executive Directors
Bill Brown
Tony Clark
Joanna Crane
Jon Furmston
Martin Phillips

None of the Non-executive Directors above:

a) has been an employee of the NHS Foundation Trust within the last five years;

b) has, or has had within the last three years, a material business relationship with the NHS Foundation Trust either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the NHS Foundation Trust;

c) has received or receives additional remuneration from the NHS Foundation Trust apart from a Director’s fee, participates in the NHS Foundation Trust’s performance-related pay scheme, or is a member of the NHS Foundation Trust’s pension scheme;

d) has close family ties with any of the NHS Foundation Trust’s advisers, Directors or senior employees;

e) holds cross-directorships or has significant links with other Directors through involvement in other companies or bodies;

f) has served on the Board of the NHS Foundation Trust for more than six years from the date of their first appointment; or

g) is an appointed representative of the NHS Foundation Trust’s University Medical or Dental School.

Approved by the Board of Directors on 9 July 2013
For Decision

Appointment of Senior Independent Director

1.00 Introduction

1.01 This paper asks the Board of Directors to approve the appointment of the Senior Independent Director.

2.00 Role of Senior Independent Director

2.01 Monitor’s Code of Governance, with which Foundation Trusts are expected to comply, recommends that the Board of Directors should appoint a Senior Independent Director (SID). This is reflected in clause 28.2 of the Constitution, which states that it is for the Board to appoint the SID, after consultation with the Council of Governors.

2.02 The principal role of the SID is to lead the Non-executive Directors in the annual appraisal of the Chairman, through a process to be agreed with the Council of Governors. The SID is also required to act as a point of contact between the Council of Governors and the Board of Directors, in the event that Governors do not feel able to raise issues with the Chairman. In support of this duty, the SID is expected to maintain a good working relationship with Governors, including an understanding of the issues being addressed by, and raised through, the Governors. These duties are reflected in the attached Role Description which the Board of Directors is asked to approve.

2.03 Jon Furmston, Non-executive Director, has agreed to take up the role of Senior Independent Director. At its preceding meeting the Council of Governors endorsed the proposal to appoint Jon Furmston as the SID; the Council also endorsed the attached Role Description.

3.00 Recommendations

3.01 The Board of Directors is asked to:

a) Approve the appointment of Jon Furmston as Senior Independent Director;

b) Approve the Role Description for the Senior Independent Director.
1.00 SUMMARY OF ROLE

1.01 The Senior Independent Director (SID) is responsible for ensuring that the Board of Directors (“the Board”) and the Council of Governors (“the Council”) engage actively and constructively to further the achievement of their objectives. The SID shall act as a point of contact for Governors, remain aware of their views and collaborate with the Governors and the Non-executive Directors to appraise the performance of the Chairman.

2.00 DUTIES AND RESPONSIBILITIES

Engagement with the Council

2.01 In consultation with the Chairman, the SID shall lead the Board’s discussions and decision-making in respect of engagement with the Council. In particular, the SID shall:

- ensure the development of a work-plan to be agreed between the Board and the Council
- ensure that the agenda for the meetings of the Board and the Council are aligned to the extent which is necessary for collaborative working.

2.02 In consultation with the Chairman, the SID shall lead reviews of the relationship between the Board and the Council, and ensure that actions arising from such reviews are implemented by the Board and, where necessary, staff.

2.03 The SID shall agree with the Council a schedule of its meetings which he/she will attend, and those which other Directors will attend. The SID shall attend at least two Council meetings per year. The SID shall receive the papers for all meetings of the Council.

2.04 The SID shall maintain contact with the Governors such that he/she develops, maintains and is able to communicate to the Board a good understanding of their views and the issues under discussion at their meetings.

Dispute Resolution and Performance

2.05 The SID shall act as a point of contact such that the Council (or, where necessary, individual Governors) can raise concerns in the event that it is not possible or appropriate for such issues to be directed to the Chairman.

2.06 The SID shall in accordance with the Constitution and any associated policies engage with the Council with the aim of resolving any disputes which arise between it and the Board.

The Chairman

2.07 The SID shall agree with the Council the process and criteria by which the performance of the Chairman will be reviewed annually. The SID shall lead the appraisal of the Chairman, normally by meeting with the Non-executive Directors, and report outcomes to the Council, and shall work with the Council to set objectives for the Chairman.

2.08 The SID shall be available to the Council and the Non-executive Directors to receive and to assist in addressing any concerns about the performance of the Chairman. The SID shall be consulted by the Council when it is discharging its responsibilities in respect of the appointment and, where necessary, removal of the Chairman.
3.00 CONDITIONS OF OFFICE

3.01 The SID shall be an independent Non-executive Director. The Chairman shall not be appointed as the SID.

3.02 The SID shall be appointed (and, where necessary, re-appointed or removed) by the Board, following consultation with the Council.

3.03 The SID shall normally be appointed for a three-year term, subject to the performance of the SID being reviewed when the office-holder’s performance is reviewed by the Chairman. A Non-executive Director shall not normally hold the office of SID for more than six years.

3.04 In addition to this Role Description, the SID shall comply with the Role Description for Non-executive Directors and any Code of Conduct or other relevant policies approved by the Board.

Approved by the Board of Directors on 9 July 2013

Endorsed by the Council of Governors on 9 July 2013
To: Board of Directors  
From: Mike Viggers, Chairman

FOR DECISION

TERMS OF REFERENCE FOR BOARD OF DIRECTORS

1.00 INTRODUCTION

1.01 This paper asks the Board of Directors to approve its Terms of Reference.

2.00 TERMS OF REFERENCE

2.01 The overall role and the specific duties and responsibilities of the Board of Directors are defined principally in legislation, including the Health & Social Care Act 2012, and in Monitor’s Code of Governance. It is normal practice to reflect the duties and responsibilities in a set of Terms of Reference (TOR) approved by the Board of Directors.

2.02 The proposed TOR for the Board of Directors are presented with this paper. The TOR include all of the statutory duties required of the Board of Directors but these are supplemented with other statements to ensure robust Foundation Trust governance. To an appropriate extent the TOR also define some of the means by which the Board of Directors will discharge its responsibilities.

2.03 Although it is necessary for the TOR to be approved at this time, to provide a formal basis for the role of the Board of Directors, it is recognised that some aspects of the TOR may require refinement in the context of discussions with the Council of Governors as to the way in which Directors and Governors will discharge their responsibilities. The TOR can be amended at any time by the Board of Directors, including, as stated in the document, not more than one year following this approval.

3.00 RECOMMENDATION

3.01 The Board of Directors is asked to approve its Terms of Reference.
WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

TERMS OF REFERENCE FOR BOARD OF DIRECTORS

1.00 PURPOSE OF BOARD OF DIRECTORS

1.01 The Board of Directors (“the Board”) is established in accordance with the requirements of the NHS Act 2006 and the Constitution of Western Sussex Hospitals NHS Foundation Trust (“the Trust”).

1.02 The Board’s role is to determine the mission and values of the Trust and decide the strategy and plans through which the organisation will realise its mission, to hold management to account for the performance against agreed plans and to ensure that the organisation remains compliant with its Provider Licence and all relevant legislative and regulatory requirements.

2.00 ENABLING PROVISIONS

2.01 All business of the Board shall be carried out in the name of the Trust.

2.02 The Board when in a quorate meeting is empowered to determine any matter for which it has authority within the Trust’s Constitution and Provider Licence and any relevant legislation or regulatory requirements.

2.03 The Board shall at all times act to maintain and promote high-quality care for patients and it shall ensure that the Trust remains compliant with its Provider Licence and all relevant legal and regulatory requirements.

3.00 MISSION, VISION AND VALUES

3.01 The Board shall in consultation with the Council of Governors (“the Council”) determine the Trust’s mission, vision and values. The Board shall review these annually in order to ensure that they remain relevant in the context of the Trust’s operating environment and its position.

3.02 The Board shall ensure that the Trust’s mission, vision and values and culture are communicated clearly to all relevant stakeholders, including patients, members, staff and the public. As a minimum, the Trust’s mission, vision and values shall be set out within the organisation’s Annual Business Plan.

4.00 STRATEGY DEVELOPMENT, PLANNING AND RISK MANAGEMENT

4.01 The Board shall:

a) in consultation with the Council determine the Trust’s strategy, which will normally be set out over a three to five-year period;
b) subject to the Scheme of Delegation and where it so decides, in consultation with the Council, approve service-related and other strategies and plans which support the overall strategy of the organisation;
c) determine the financial strategy and plans, including in respect of strategic treasury management;
d) approve the Annual Business Plan which shall be derived from the strategy approved by the Board;
e) approve the Annual Budget, which shall be derived from the financial strategy and shall be integrated with the Annual Business Plan;
f) approve the Risk Management Strategy and the associated arrangements through which the Trust manages the risks associated with its activities, including the Board Assurance Framework, and ensure that these arrangements are reviewed regularly.
g) ensure the implementation of any nationally-prescribed strategies and plans relevant to the Trust.

5.00 SERVICE DEVELOPMENT AND REVIEW

5.01 The Board shall:

a) in support of the approved strategy and in consultation with the Council, determine the programme for service developments (which includes the provision of new services and the expansion of existing services);
b) direct the Executive to develop and, following consultation with the Council, approve proposals for service developments, subject to the provisions of the Scheme of Delegation;
c) on recommendation from the Executive consider and, if thought appropriate, approve proposals for new services as a result of opportunities presented to the Trust;
d) subject to the Scheme of Delegation and following recommendations from the Executive and consultation with the Council, approve the programme for service reviews with the aim of identifying opportunities to enhance the efficiency and/or effectiveness of services to patients;
e) receive reports arising from service reviews commissioned by the Board and, if considered appropriate and following consultation with the Council, agree any recommended actions;
f) in support of the approved strategy and/or following any recommendations from the Executive, determine the decommissioning of any services, ensuring that the Council is consulted on such proposals.

6.00 INVESTMENT AND DISINVESTMENT

6.01 The Board shall:

a) approve the Trust’s Estates Strategy and any other strategies or plans which, as defined in the Scheme of Delegation, require significant investment or disinvestment;
b) subject to the Scheme of Delegation, approve specific investment and disinvestment proposals including any in respect of property assets.

7.00 PERFORMANCE REVIEW

7.01 The Board shall:

a) in consultation with the Executive determine the performance information which it will receive, such that the Board is able to discharge its responsibility to ensure that the Trust complies with the terms of its Authorisation;
b) monitor performance against the Annual Business Plan and budget, identifying any variances and scrutinising and, where necessary, approving the plans and arrangements through which the Executive is managing them;
c) monitor performance against operating targets (in respect of activity and the quality of care), identifying any variances and scrutinising and, where necessary, approving the plans and arrangements through which the Executive is managing them;
d) monitor progress in respect of the implementation of strategies and plans approved by the Board, such monitoring arrangements to be agreed alongside the approval given by the Board;
e) monitor the management of and where necessary take action in respect of any significant matters, including legal proceedings, which could impact the Trust’s reputation or compliance with its Terms of Authorisation and any relevant legal and regulatory requirements;

f) report to the Council in respect of the Trust’s performance against strategies, plans, budgets and targets, and take account of any representations or requests made by the Council in response to these reports or views expressed by Members.

8.00 POLICY SETTING

8.01 The Board shall:

a) in respect of matters reserved to the Board (through the Scheme of Delegation) set policy and approve specific policy documents where necessary;

b) approve a programme for the review of policies determined by the Board and, through it, consider and where appropriate, approve amended policies recommended by the Executive.

c) ensure that policies are properly communicated to staff and, where necessary, other stakeholders, and implemented.

10.00 REGULATION, GOVERNANCE, CONTROL AND LEGAL MATTERS

10.01 The Board shall:

a) ensure that the Trust remains compliant with its Provider Licence and with all relevant legal and regulatory requirements, including where necessary by approving submissions to regulators and by receiving from the Executive reports of compliance with requirements;

b) in accordance with the Constitution and Standing Orders, establish an Audit Committee and a Nominations and Remuneration Committee on such terms of reference and with a membership to be determined by the Board;

c) where necessary and where permitted by the Provider Licence and any relevant legal or regulatory requirements, delegate to Committees or to Officers its powers, ensuring that the terms of delegation are clearly set out;

d) establish, maintain and regularly review a robust system of internal control, including by approving a Scheme of Delegation, Standing Orders, Standing Financial Instructions and other governance or control arrangements;

e) through policies to be approved by the Board, require Directors to declare and record relevant interests and gifts or hospitality received or offered, and to adhere to such standards of conduct as the Board may determine;

f) agree with the Council a work-plan which will inform and co-ordinate the business to be considered by the Council and the Board;

g) agree with the Council a policy which will set out the arrangements for engagement and communication between the Council and the Board, complying with the provisions in Standing Orders;

h) in particular, hold one joint meeting with the Council each year and make arrangements for Governors to attend meetings of the Board and for Directors to attend meetings of the Council when necessary;

i) in all its engagement and communication with the Council, act constructively and collaboratively at all times and seek always to resolve any disputes which arise;

j) recommend to the Council the appointment of the Chief Executive.

11.00 AUDIT, ACCOUNTABILITY AND STAKEHOLDER ENGAGEMENT

11.01 The Board shall:
a) ensure that the Executive prepares and, on recommendation from the Executive, approve Annual Accounts and an Annual Report in compliance with legal and regulatory requirements;
b) present to the Council the Annual Accounts, the Annual Report and the Quality Accounts;
c) receive and ensure that any necessary action is taken in respect of reports from the Trust’s Auditor;
d) in consultation with the Executive and the Council, manage at strategic level the Trust’s relationships with stakeholders (including regulators), and generally promote accountability and openness;
e) in consultation with the Council, ensure that the Trust has robust arrangements for regular, effective communications with Members and, where appropriate, engage with Members of the Trust.

12.00 PERFORMANCE REVIEW AND EVALUATION

12.01 The Board shall:

a) at least annually, with the support of Officers, undertake a review of its performance against these Terms of Reference, its objectives, the work-plan agreed with the Council and any other criteria agreed by the Board;
b) at least annually, ensure that the Trust’s governance structure and arrangements are reviewed such that they remain appropriate and compliant with all relevant requirements;
c) consider reports arising from such reviews and decide and ensure implementation of the actions agreed to address outcomes;
d) ensure that members of the Board comply with relevant Role Descriptions, the Code of Conduct and all other terms and conditions of appointment (including those within Standing Orders), overseeing performance reviews for Directors and addressing where necessary any Director-specific recommendations from the Chairman;
e) ensure that Directors have and, where necessary, are supported to develop the skills and experience necessary to discharge their responsibilities, including by overseeing the completion of training/development programmes.

13.00 ADMINISTRATIVE MATTERS

13.01 The Board shall have a Deputy Chairman, who shall be appointed by the Council, with duties and responsibilities as defined in Standing Orders and a Role Description.

13.02 The Board shall appoint a Senior Independent Director on terms to be approved by the Board.

13.03 The Board’s meetings shall be administered in accordance with the Standing Orders.

13.04 The Secretary (or his nominee) shall be the Secretary to the Board.

Approved by the Board of Directors on 9 July 2013
TO: Board of Directors
FROM: Mike Viggers, Chairman
AGENDA ITEM: 10

FOR DECISION

APPROVAL OF GOVERNANCE STRUCTURE

1.00 INTRODUCTION

1.01 This paper asks the Board of Directors to approve the Board-level committee structure and memberships.

2.00 GOVERNANCE STRUCTURE

2.01 Western Sussex Hospitals NHS Trust had an established Board and Committee structure that was well embedded and had been subject to review and enhancement at appropriate times, including in response to comments from Monitor. Following the establishment of the Foundation Trust it is necessary for the Board to approve the structure for this organisation.

2.02 Although the structure will be subject to review, collectively and through self-reviews undertaken by committees, it has delivered robust governance of the organisation so it is not proposed to make any changes to the structure at the present time. The governance structure is set out in the attached chart, defined in detail through Terms of Reference (approved previously and not amended since) and membership of the committees as approved by the Board of the NHS Trust.

2.03 The Terms of Reference and membership have not been changed from the NHS Trust, with the exception of the role of the Nominations & Remuneration Committee. As the Board is aware, the Code of Governance sets down specific requirements and membership for the Committee when it is considering appointment, succession planning and remuneration of Executive Directors. This is explained in the attached paper which was considered at the preceding meeting of the Committee.

3.00 RECOMMENDATIONS

3.01 The Board of Directors is asked to:

a) approve the committee structure;

b) approve the Terms of Reference for Nominations & Remuneration Committee;

c) note that the Terms of Reference for the other committees in the structure remain as approved previously by the Board of the NHS Trust;

d) approve the membership of committees.
WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

TERMS OF REFERENCE FOR NOMINATIONS & REMUNERATION COMMITTEE
OF THE BOARD OF DIRECTORS

1.00 PURPOSE OF COMMITTEE

1.01 The Committee is established as a standing (and statutory) Committee of the Board of Directors (the Board) to support and make recommendations to the Board in respect of the appointment, appraisal, re-appointment and terms and conditions for Executive Directors.

2.00 MEMBERSHIP

2.01 The membership of the Committee shall be the Chairman and all the Non-executive Directors. When the Committee is considering the appointment or removal of any Executive Director, the Chief Executive shall be a member.

2.02 Those normally in attendance at the Committee meetings shall be:

- Chief Executive
- Director of Organisational Development & Leadership

2.03 No Executive Directors shall be members of the Committee.

2.04 The Company Secretary or his/her nominee shall act as Secretary to the Committee and shall attend to take minutes of the meeting and provide appropriate support to the Chair and Committee members.

3.00 DUTIES AND RESPONSIBILITIES

Authority

3.01 The Committee shall have the delegated authority to act on behalf of the Board in accordance with Monitor’s Code of Governance and the Foundation Trust’s Constitution, Standing Orders, Standing Financial Instructions, and Scheme of Delegation. The limit of such delegated authority is restricted to the areas outlined in the Duties of the Committee and subject to the rules on reporting, both as defined below.

3.02 The Committee is empowered to investigate any activity within its Terms of Reference, and to seek any information it requires from staff, who are required to co-operate with the Committee in the conduct of its enquiries.

3.03 The Committee is authorised by the Board to obtain independent legal and professional advice and to secure the attendance of external personnel with relevant experience and expertise, should it consider this necessary. External advisors shall not be members of the Committee or have any vote on matters considered by it. All such advice should be arranged in consultation with the Company Secretary.
Duties

Succession Planning

3.04 The Committee shall:

a) keep under regular review the structure, size and composition of the Board, including in respect of skills and experience, to ensure that it is balanced and appropriate in the context of the Foundation Trust’s strategies and the skills which the Board will require in order to properly discharge its responsibilities;

b) take into account the views of the Chief Executive in respect of the qualifications, skills and experience required for Executive Director roles;

c) in the context of reviews and the Chief Executive’s views, develop and monitor a succession plan for Executive Directors. Ensure that the succession plan includes posts reporting directly to Executive Directors and other relevant roles within the senior management team;

d) where necessary, make recommendations to the Board for changes to the Board’s structure, size and composition.

Review of Executive Directors

3.05 The Committee shall:

a) ensure that the Trust has in place robust processes and criteria for the appraisal of the Chief Executive and Executive Directors;

b) ensure that the appraisal processes are implemented robustly and transparently;

c) consider the outcomes of the appraisal processes, particularly in the context of the succession plan for the Board.

Recruitment, Selection and Appointment

3.06 The Committee shall:

a) in respect of the role of Chief Executive, develop a process for recruiting, selecting and appointing the Chief Executive;

b) in respect of the roles of Executive Directors, in consultation with the Chief Executive ensure that there is a robust and transparent process for recruiting, selecting and appointing Executive Directors;

c) in the context of the evaluation of the skills and experience required on the Board, the succession plan and all relevant guidance and good practice, ensure that there are Role Descriptions for the Chief Executive and Executive Directors, to be used as a basis for recruitment and selection. Ensure that the Role Descriptions are reviewed at least annually;

d) ensure that the agreed process is implemented robustly and transparently, including through participation in the process where required;

e) appoint the Chief Executive and, except in respect of the initial Chief Executive, recommend the appointment for approval by the Council;

f) with the Chief Executive, appoint and remove the Executive Directors;

g) ensure that all necessary administration is completed in respect of the appointment of Executive Directors, and that they receive appropriate induction programmes.
Remuneration and Terms & Conditions

3.07 The Committee shall:

a) determine the terms and conditions of office of the Executive Directors, including: salary and any other pay, pensions, and all other terms and conditions;
b) in doing so have regard to all relevant law, regulatory requirements and good practice (including Monitor’s Code of Governance), and shall take account of remuneration and other terms and conditions in comparable organisations and elsewhere as appropriate. The Committee shall also have regard to the financial position and reputation of the Foundation Trust;
c) ensure that terms and conditions for Executive Directors are kept under review, linked to the annual appraisal process.

Payments to Staff

3.08 The Committee shall consider and if thought appropriate approve recommendations in respect of contractual and non-contractual severance and redundancy payments to staff leaving the Trust.

Employee Relations

3.09 The Committee shall maintain oversight of all employee relations matters, including and legal action, to ensure that action is taken robustly and in compliance with all relevant laws, policies and procedures.

Reporting and Relationships

3.10 The Committee shall:

a) be accountable to the Board and shall report to the Board after each Committee meeting. The form of the report shall be appropriate in the context of the information being reported, particularly where this is sensitive or confidential;
b) through the Chairman, report to the Council as relevant and appropriate;
c) ensure that the Foundation Trust complies with all disclosure requirements (including those set out in Monitor’s Code of Governance) in respect of Executive Directors’ terms and conditions of office, and appointment, appraisal and re-appointment processes, and other matters as necessary. The Committee shall be asked to approve disclosures relating to its activities and decisions.

4.00 CONDUCT OF BUSINESS

4.01 The Committee shall be deemed quorate if the Chairman and two Non-executive Directors are present. A quorate meeting shall be competent to exercise all or any of the authorities, powers and duties vested in or exercised by the Committee.

4.02 The Committee shall agree a schedule for its meetings, having regard to requirements to conduct reviews of terms and conditions, and any other material factors. The Chair may request an extraordinary meeting if he/she considers one to be necessary.

4.03 At the discretion of the Chair of the Committee business may exceptionally be transacted through a teleconference provided all parties are able to hear all other parties and where an agenda has been issued in advance, or through the signing by every member of a written resolution sent in advance to members and recorded in the minutes of the next formal meeting.
4.04 Agendas and briefing papers should be prepared and circulated five clear days before each meeting, to give sufficient time for Committee Members to give them due consideration.

4.05 Minutes of Committee meetings should be formally recorded and distributed to Committee Members within 10 working days of the meetings.

Approved by the Committee on 9 July 2013
<table>
<thead>
<tr>
<th>Committee</th>
<th>Members</th>
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<tr>
<td>Audit</td>
<td>Jon Furmston, Joanna Crane, Bill Brown</td>
<td>Director of Finance (Exec Directors as required) Deputy Director of Finance</td>
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<td></td>
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<td>External and Internal Auditors Local Counter Fraud Specialist</td>
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<td>Quality &amp; Risk</td>
<td>Tony Clark, Martin Phillips, Joanna Crane</td>
<td>Chief Executive Directors of Clinical Services Chiefs of Service Heads of</td>
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<td>Nursing</td>
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<td>Patient Experience &amp; Feedback</td>
<td>Tony Clark, Bill Brown, Martin Philips</td>
<td>Customer Relations Manager PALS Manager</td>
</tr>
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<td>SIRI Review Panel</td>
<td>Tony Clark, Bill Brown, Martin Philips</td>
<td>Risk &amp; Patient Safety Manager Head of Clinical Governance</td>
</tr>
<tr>
<td>Finance and Investment</td>
<td>Mike Viggers, Martin Phillips, Tony Clark</td>
<td>Chief Operating Officer Deputy Director of Finance Non-executives</td>
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<td>Charitable Funds</td>
<td>Martin Phillips, Jon Furmston</td>
<td>Chief Operating Officer Medical Director</td>
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<td>Director of Nursing &amp; Patient Safety Director of Nursing &amp; Patient Safety</td>
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<tr>
<td>Nominations &amp; Remuneration</td>
<td>Mike Viggers, Jon Furmston, Bill Brown</td>
<td>Chief Executive Director of OD and Leadership</td>
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<tr>
<td>Committee</td>
<td>(see note 2 below)</td>
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</table>

Note 2: See note 2 below.
Notes:

1. Bold text denotes the Lead Executive Director(s) for the Committee
2. As required by the Code of Governance, when the Nominations & Remuneration Committee is considering the appointment or remuneration of the Chief Executive its members shall be the Chairman and all Non-executives. When it is considering these matters in respect of Executive Directors its membership shall be the Chairman, Non-executive Directors and the Chief Executive.

Graham Lawrence
Company Secretary
June 2013
To: Board of Directors  
From: Mike Viggers, Chairman  
Date: 9 July 2013  
Agenda Item: 11

FOR DECISION

ROLE DESCRIPTIONS

1.00 INTRODUCTION

1.01 This paper asks the Board of Directors to approve the Role Descriptions for the Chairman, Non-executive Directors and Deputy Chairman.

2.00 ROLE DESCRIPTIONS

2.01 Monitor recommends that all Directors should have role/job descriptions and, since NHS Trusts do not set their own role descriptions for Non-executives, Monitor recommends a template for the Chairman and Non-executive Directors.

2.02 In accordance with Monitor’s recommended template and also with the Code of Governance, role descriptions have been developed for the Chairman, Non-executives, Deputy Chairman and Senior Independent Director. The latter was approved by the Board earlier in the meeting so this paper presents the others to be endorsed, following approval at the earlier meeting of the Council of Governors.

2.03 It is for the Council of Governors to appoint and determine the terms and conditions for the Chairman and Non-executive Directors, and to appoint the Deputy Chairman, so at its preceding meeting the Council approved the attached role descriptions. The Board is asked to endorse them so that both fora responsible for the governance of the organisation are in agreement.

2.04 Monitor also prescribes role descriptions for the Chief Executive and Finance Director. In accordance with the Monitor’s requirements and the Constitution, these role descriptions were approved by the preceding meeting of the Nominations & Remuneration Committee which, for that meeting, comprised the Chairman, Non-executive Directors and the Chief Executive.

3.00 RECOMMENDATIONS

3.01 The Board of Directors is asked to endorse the Role Descriptions for the Chairman, Non-executive Directors and Deputy Chairman
WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

ROLE DESCRIPTION

Job Title: Chairman

Base: Worthing Hospital (with working at St.Richard’s and Southlands Hospitals, and in other locations as required)

Accountable to: Council of Governors

Job Summary: The Chairman is the leader of the Board of Directors (the Board) and works with Directors to develop the organisation’s vision, values, strategies and objectives. The Chairman is personally responsible for the leadership and effectiveness of the Board and the Council of Governors, and provides visible leadership in developing a positive culture for the Trust.

DUTIES AND RESPONSIBILITIES

Strategy

1. Work with Directors and Governors in developing and promoting the Trust’s vision, values, culture, aims and strategic objectives, within a set strategic planning cycle approved by the Board.
2. Ensure that the Board and the Council of Governors (the Council) understand and take account of all relevant strategic issues and risks.
3. Hold the Chief Executive Officer to account for delivery of strategy and the performance of the Trust.
4. Pro-actively direct and manage Board and Council decisions, ensuring compliance with all relevant governance and regulatory requirements, and full and complete consideration has been given to all options during the decision-making process.

Human Resources

1. Facilitate the appointment, effective development and contribution of Non-executive and Executive Directors, and Governors, and ensure that succession plans are in place for the Board and the Council.
2. Ensure that the Board has the right balance and diversity of skills, knowledge and perspective.
3. Conduct regular performance reviews for Non-executive Directors, ensuring that appropriate objectives and development plans are set and implemented.
4. Take responsibility for own personal development, ensuring that this takes account of the outcomes from the appraisal process approved by the Council.
5. Avoid conflicts with interests outside the Trust, as defined in the Foundation Trust Constitution.

Operations

1. Ensure that the Board establishes clear objectives to deliver the agreed strategies and plans and to meet the Trust’s Provider Licence and, regularly reviews performance against these objectives.
2. Ensure that the Trust has in place governance arrangements which are appropriate and compliant with all relevant legal and regulatory requirements, and that these are reviewed regularly.
3. Plan and conduct Board and Council meetings, in conjunction with the Chief Executive and with advice and support from the Company Secretary as necessary, ensuring an appropriate focus on quality of care, strategy and holding to account in respect of performance.

4. Plan and conduct meetings of the Nominations & Remuneration Committees of the Board of Directors and Council of Governors, with advice and support from the Company Secretary as necessary.

5. Share and use relevant expertise with Directors and Governors in a changing healthcare environment.

6. Promote and model appropriate processes and procedures to deliver high standards of professional, clinical, administrative and personal behaviours and integrity across the Trust.

7. Be aware of and understand relevant, regulatory and central government policies.

8. Comply at all times with the Trust's published health and safety policies, in particular, by following agreed safe working procedures and reporting incidents using the Trust's risk reporting systems.

**Communication and relationships**

1. Ensure that the Board and Council are (and are seen to be) committed to holding all aspects of care quality at the centre of the Trust’s strategy, change programmes and improvement plans.

2. Ensure that the Board promotes equality and diversity, and high standards of integrity and probity, for all its patients, staff and other stakeholders.

3. Provide visible leadership in developing a positive culture for the Trust, role-modelling its values and ensuring this is reflected in the Board’s behaviour and decision making.

4. Ensure harmonious relations and effective, constructive dialogue and value from the following bodies:
   - Board of Directors
   - Council of Governors
   - principal institutional stakeholders in the Trust’s community
   - national healthcare stakeholders and
   - regulators such as Monitor and the Care Quality Commission

5. Ensure the provision of accurate, timely and clear information to Directors and Governors, so that within the boundaries of probity, good governance and risk, the Trust meets all its statutory objectives and remains within the terms of its authorisation.

6. Represent the Trust’s views with national, regional or local bodies or individuals and ensure that the views of a wide range of stakeholders (including, through the Council and otherwise), the views of members) are considered.

7. Be an ambassador for the Trust; be knowledgeable and aware of local issues and enable the Trust to meet its responsibilities both to the communities it serves and as a major local employer.

8. Set an example on all policies and procedures designed to ensure equality of employment. Staff, patients and visitors must be treated equally irrespective of gender, ethnic origin, age, disability, sexual orientation, religion or other differences.

**PERSON SPECIFICATION**

**Education/ Qualifications**

Educated to Masters level, or to demonstrate an equivalent qualification or level of experience.
Essential

1. Experience of strategic leadership, organisational change and culture in challenging economic and fiscal times.

2. The confidence and motivation to improve Trust performance and plan for and address challenges as they are forecast or arise.

3. Exceptional Chairman or Non Executive director experience at Board or major Divisional Board level.

4. Evidence of success in leading a service-driven organisation of comparable scale, complexity, whether within the NHS, wider public or commercial sectors.

5. An understanding of and interest in healthcare, a commitment to NHS principles and the aims of Western Sussex Hospitals NHS Foundation Trust and the wider local community.

6. Ability to take on a personal development role to build, motivate and lead an effective multi-disciplinary team, holding the Chief Executive, Executive Director's, Non Executives and Governor’s to account.

7. Evidence of success in building, leading, motivating and developing multi-disciplinary teams as a highly effective leader.

8. Full commitment to the Trust’s values and behaviours, and patient-led service development programmes.

9. Exceptional communication skills, a personable and motivating public speaker, able to manage the media. A high level of ability to gain support and to influence internal and external stakeholders.

10. Ability to grasp relevant issues and understand the relationships between interested parties, this will be at a national (general and NHS) and local level (community and partnership working) and could include patient expectations, the economic and political climate and its impact on the NHS and in particular Foundation Trusts.

Desirable

1. Knowledge of either finance, law, health and safety, equality, diversity and human rights and/or other NHS principles and responsibilities.

2. A portfolio of high level governance and organisational skills including strategic planning, financial acumen, risk management, organisation performance management and service development in an environment of comparable size and complexity.

Approved by the Council of Governors on 9 July 2013
WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

ROLE DESCRIPTION

Job Title: Non-Executive Director

Base: Worthing Hospital (with working at St.Richard’s and Southlands Hospitals, and in other locations as required)

Accountable to: Chairman and Council of Governors

Job Summary: A Non-Executive Director is a member of the Board of Directors and brings independence, external skills and perspectives, and challenge to strategy development. Directors share a corporate responsibility for the governance and performance of the Trust in meeting both strategic and operational objectives.

DUTIES AND RESPONSIBILITIES

1. Assist fellow Directors in setting the Trust’s strategic aims, ensuring that the necessary financial and human resources are in place for the Trust to meet its objectives, and that performance is effectively monitored and reviewed.

2. Assist fellow Directors in setting the Trust’s values, culture and standards and ensure that its obligations to its stakeholders and the wider community are understood and fairly balanced at all times.

3. Provide independent judgement and advice on issues of strategy, vision, performance, resources and standards of conduct and constructively challenge, influence and help the Board develop strategies.

4. Commit to working to, and to encouraging within the Trust, the highest standards of probity, integrity and governance and contribute to ensuring that the Trust’s governance arrangements conform with best practice and statutory requirements.

5. In accordance with agreed Board procedures, monitor the performance and conduct of management in meeting agreed goals and objectives and statutory responsibilities, including the preparation of annual reports and annual accounts and other statutory duties, ensuring all occurs in the best interests of the public.

6. Obtain assurance that financial information is accurate and that financial controls and risk management systems are robust and defensible.

7. Be a member (and, where approved by the Board, be Chair) of committees established by the Board to exercise delegated responsibility and support accountability.

8. As a member of the Board, appoint, remove, support, encourage and where appropriate ‘mentor’ the Chief Executive and Executive Directors, and determination of appropriate levels of remuneration for Executive Directors. Ensure that there is a robust succession plan in place for all Executive roles.

9. Review the Chairman’s performance along with the Senior Independent Director.

10. Engage positively and collaboratively in Board discussion of agenda items and act as an ambassador for the Trust in engagement with stakeholders including the local community, and dealing with the media when appropriate.
11. Attend meetings of the Council of Governors at a frequency to be agreed by the Board, to give account for the performance of the Board, and to ensure an understanding of Governors’ views on issues of strategy and performance as a basis for taking such views into account during Board discussions.

12. Avoid conflicts with interests outside the Trust, as defined in the Foundation Trust Constitution.

PERSON SPECIFICATION

Education/ Qualifications

Educated to Masters level, or to demonstrate an equivalent qualification or level of experience.

Essential

1. Experience of working successfully at a Senior or Board level in an organisation of an equivalent size and complexity, with one of the following specialist areas of knowledge:
   - Clinical, ideally with managerial or leadership responsibility
   - Finance and accountancy
   - Governance, bringing strategic analysis, decision making, risk and performance management skills, ideally with a customer or patient focus
   - Commercial experience, bringing both governance and private sector experience with a customer or patient focus

2. Evidence of success in leading a service-driven organisation of comparable scale, complexity, whether within the NHS, wider public or commercial sectors.

3. Experience of strategic leadership of organisational change and culture in challenging economic and fiscal times.

4. The confidence and motivation to improve the Trust’s quality of service and performance, and to plan for and address challenges as they are forecast or arise.

5. An understanding of and interest in healthcare, a commitment to NHS principles and the aims of the Trust and the wider local community.

6. Full commitment to the Trust’s values and behaviours and patient-led service development programmes.

Approved by the Council of Governors on 9 July 2013
WESTERN SUSSEX HOSPITALS NHS FOUNDATION TRUST

ROLE DESCRIPTION FOR DEPUTY CHAIR

1.00 SUMMARY OF ROLE

1.01 The Foundation Trust Constitution requires the Council of Governors (the Council) to appoint a Deputy Chairman to deputise for and support the Chair. The role of the Deputy Chairman shall normally be to deputise for the Chair at meetings of the Board of Directors (the Board) and the Council.

2.00 DUTIES AND RESPONSIBILITIES

Definition of Role

2.01 The Deputy Chairman means the Non-Executive Director appointed by the Council of Governors in accordance with the Foundation Trust Constitution.

Deputising for Chairman

2.02 The Deputy Chairman shall deputise for and support the Chairman in respect of the authorities and responsibilities conferred on, or delegated to, the Chairman by the Board, as set out in the Chairman’s Role Description, and any other authority or responsibility that the Board, Council, the Constitution or Provider License confer. This will include the duties described below.

Board of Directors

2.03 The Deputy Chairman shall normally preside at meetings of the Board in the following circumstances:

   a) when there is a need for someone to have the authority to chair any meeting of the Board when the Chair is not present;

   b) on occasions when the Chair declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Board.

Council of Governors

2.04 The Deputy Chairman shall normally preside at meetings of the Council in the following circumstances:

   a) when there is a need for someone to have the authority to chair any meeting of the Council when the Chair is not present

   b) when the remuneration, allowance and other terms and conditions of the Chair are being considered.

   c) when the appointment of the Chair is being considered, should the current Chair be a candidate for re-appointment.

   d) on occasions when the Chair declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council.

2.05 The Deputy Chairman shall not be a member of the Council.
3.00 CONDITIONS OF OFFICE

3.01 The Deputy Chairman shall be appointed (and, where necessary, re-appointed or removed) by the Council.

3.02 The term of office for the Deputy Chairman shall be the same as the term of office for which the Non-executive Director (holding office as Deputy Chairman) has been appointed to the Board.

3.03 In addition to this Role Description, the Deputy Chairman shall comply with the Role Description for Non-executive Directors and any Code of Conduct or other relevant policies approved by the Council.

Approved by the Board of Directors on 9 July 2013

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FOR APPROVAL

Standing Financial Instructions and Delegated Financial Limits

1 Introduction

1.1. The Change of status to Foundation Trust requires the adoption of a number of documents by the new organisation, including Standing Financial Instructions (SFIs) and Delegated Financial Limits. These documents are complemented by other revised governance, including the new Foundation Trust constitution.

2 Summary

2.1. As a starting point for the new Foundation Trust, the NHS Trust’s existing SFIs and Delegated Financial Limits are proposed for adoption, modified only for references to the Council of Governors, Monitor and other governance where appropriate. This is to be followed, later in the financial year, with a full review and revision.

2.2. The Trust Secretary has advised that the constitution will replace standing orders and so this review does not extend to other governance documents.

3 Recommendation

3.1. The Board is asked to approve the documents provided.

4 Standing Financial Limits (SFIs)

4.1. The existing SFIs have been reviewed and modified only for any immediate changes required concerning the Council of Governors statutory powers, Monitor and reference to the Trust constitution. They are presented in Appendix 1.

4.2. Other than for these, no changes have been made to the coverage or content of the SFIs. However it is intended to conduct a full review later in the financial year under a wider consultation.

5 Delegated Financial Limits

5.1. The existing delegated financial limits have been reviewed and modified only for any immediate changes required concerning the Council of Governors statutory powers, Monitor and reference to the Trust constitution. They are presented as Appendix 2.

5.2. As with the SFIs, there are no other changes to content and a review, under wider consultation, will be undertaken later this financial year.
STANDING FINANCIAL INSTRUCTIONS

July 2013
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1. INTERPRETATION AND DEFINITIONS FOR STANDING FINANCIAL INSTRUCTIONS

1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Financial Instructions (about which he/she should be advised by the Chief Executive).

1.2 Any expression to which a meaning is given in the National Health Service Act 2006, Health and Social Care Act 2012 and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Financial Instructions and in addition:

1.2.1 "Accountable Officer" means the NHS Officer responsible and accountable for funds entrusted to the Trust. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

1.2.2 "Trust" means Western Sussex Hospitals NHS Foundation Trust.

1.2.3 "Board" means the Chair, officer and non-officer members of the Trust collectively as a body.

1.2.4 "Budget" means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

1.2.5 "Budget holder" means the officer or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.

1.2.6 "Chair of the Board (or Trust)" is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression “the Chair of the Trust” shall be deemed to include the Vice-Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

1.2.7 "Chief Executive" means the chief officer of the Trust.

1.2.8 "Commissioning" means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

1.2.9 "Committee" means a committee or sub-committee created and appointed by the Board.

1.2.10 "Committee members" means persons formally appointed by the Board to sit on or to chair specific committees.

1.2.11 "Contracting and procuring" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

1.2.12 "Council of Governors" means the body that represents the interests of trust members and the public.

1.2.13 "Director of Finance" means the Chief Financial Officer of the Trust.

1.2.14 "Funds held on trust" shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses
subsequently to accept under powers derived under S.90 of the NHS Act 1977, as amended. Such funds may or may not be charitable.

1.2.15 "Nominated officer" means an officer charged with the responsibility for discharging specific tasks within Standing Financial Instructions.

1.2.16 "Officer" means employee of the Trust or any other person holding a paid appointment or office with the Trust.

1.2.17 "Secretary" means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust’s compliance with the law, Trust constitution, Monitor and Department of Health guidance.

1.2.18 "SFI" means Standing Financial Instructions.

1.2.19 "Vice-Chair" means the person appointed by the Council of Governors to take on the Chair’s duties if the Chair is absent for any reason.
2. INTRODUCTION

2.1 General

2.1.1 These Standing Financial Instructions (SFIs) are issued in accordance with the Trust (Functions) Directions 2000 issued by the Secretary of State, as amended by the Trust, which require that each Trust shall agree Standing Financial Instructions for the regulation of the conduct of its officers in relation to all financial matters with which they are concerned.

2.1.2 These Standing Financial Instructions detail the financial responsibilities, policies and procedures adopted by the Trust. They are designed to ensure that the Trust’s financial transactions are carried out in accordance with the law and with Government policy in order to achieve probity, accuracy, economy, efficiency and effectiveness. They should be used in conjunction with the Schedule of Decisions Reserved to the Board and the Scheme of Delegation adopted by the Trust.

2.1.3 These Standing Financial Instructions identify the financial responsibilities which apply to everyone working for the Trust and its constituent organisations including Trading Units. They do not provide detailed procedural advice and should be read in conjunction with the detailed departmental and financial procedure notes. All financial procedures must be approved by the Trust’s Finance & Investment Committee.

2.1.4 Should any difficulties arise regarding the interpretation or application of any of the Standing Financial Instructions then the advice of the Director of Finance must be sought before acting.

2.1.5 The failure to comply with Standing Financial Instructions, in certain circumstances, can be regarded as a disciplinary matter that could result in dismissal.

2.1.6 Overriding Standing Financial Instructions – If for any reason these Standing Financial Instructions are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance shall be reported to the next formal meeting of the Audit Committee for referring action or ratification. All officers and employees of the Trust have a duty to disclose any non-compliance with these Standing Financial Instructions to the Director of Finance as soon as possible.

2.2 Responsibilities and delegation

2.2.1 The Council of Governors’ statutory responsibilities are set out in the National Health Service Act 2006 and the Health and Social Care Act 2012. The financial duties are as follows:

2.2.2 From the National Health Service Act 2006:

(a) decide the remuneration and allowances, and the other terms and conditions of office, of the chair and non-executive directors;

(b) appoint and, if appropriate, remove the trust’s external auditor;

(c) receive the trust’s annual accounts, any report of the auditor on them and the annual report;

2.2.3 From the Health and Social Care Act 2012:

(a) approve, by a majority voting, “significant transactions” as defined within the trust constitution;
(b) approve, by a majority of all, an application by the trust to enter into a merger, acquisition, separation or dissolution;

(c) decide whether the trust’s private patient work would significantly interfere with the trust’s principle purpose, i.e. the provision of goods and services for the health service in England or the performance of its other services;

(d) approve, by a majority voting, any proposed increases in private patient income of 5% or more in any financial year;

2.2.4 **The Trust Board:** The Board exercises financial supervision and control by:

(d) formulating the financial strategy, having regard to the views of the council of governors;

(e) requiring the submission and approval of budgets within approved allocations/overall income;

(f) defining and approving essential features in respect of important procedures and financial systems (including the need to obtain value for money);

(g) defining specific responsibilities placed on members of the Board and employees as indicated in the Scheme of Delegation document.

2.2.5 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These are set out in the ‘Reservation of Matters Reserved to the Board’ document. All other powers have been delegated to such other committees as the Trust has established.

2.2.6 **The Chief Executive and Director of Finance:** The Chief Executive and Director of Finance will, as far as possible, delegate their detailed responsibilities, but they remain accountable for financial control.

2.2.7 Within the Standing Financial Instructions, it is acknowledged that the Chief Executive is ultimately accountable to the Board, and as Accountable Officer, to Monitor, for ensuring that the Board meets its obligation to perform its functions within the available financial resources. The Chief Executive has overall executive responsibility for the Trust’s activities; is responsible to the Chair and the Board for ensuring that its financial obligations and targets are met and has overall responsibility for the Trust’s system of internal control.

2.2.8 It is a duty of the Chief Executive to ensure that officers of the Board and, employees and all new appointees are notified of, and put in a position to understand their responsibilities within these Instructions. Also that the governors have the skills and knowledge required to undertake their role.

2.2.9 **The Director of Finance:** The Director of Finance is responsible for:

(a) implementing the Trust’s financial policies and for coordinating any corrective action necessary to further these policies;

(b) maintaining an effective system of internal financial control including ensuring that detailed financial procedures and systems incorporating the principles of separation of duties and internal checks are prepared, documented and maintained to supplement these instructions;
(c) ensuring that sufficient records are maintained to show and explain the Trust’s transactions, in order to disclose, with reasonable accuracy, the financial position of the Trust at any time;

and, without prejudice to any other functions of the Trust, and employees of the Trust, the duties of the Director of Finance include:

(d) the provision of financial advice to other members of the Board and employees;

(e) the design, implementation and supervision of systems of internal financial control;

(f) the preparation and maintenance of such accounts, certificates, estimates, records and reports as the Trust may require for the purpose of carrying out its statutory duties.

2.2.10 **Board Officers and Employees:** All officers of the Board and employees, severally and collectively, are responsible for:

(a) the security of the property of the Trust;

(b) avoiding loss;

(c) exercising economy and efficiency in the use of resources;

(d) conforming with the requirements of the Trust constitution, Standing Financial Instructions, Financial Procedures and the Scheme of Delegation.

2.2.11 **Contractors and their employees:** Any contractor or employee of a contractor who is empowered by the Trust to commit the Trust to expenditure or who is authorised to obtain income shall be covered by these instructions. It is the responsibility of the Chief Executive to ensure that such persons are made aware of this.

2.2.12 For all members of the Board and any employees who carry out a financial function, the form in which financial records are kept and the manner in which members of the Board and employees discharge their duties must be to the satisfaction of the Director of Finance.

3. **AUDIT**

3.1 **Audit Committee**

3.1.1 In accordance with Standing Orders, the Board shall formally establish an Audit Committee, with clearly defined terms of reference and following guidance from the NHS Audit Committee Handbook (2005), which will provide an independent and objective view of internal control by:

(a) overseeing Internal and External Audit services;

(b) reviewing financial and information systems and monitoring the integrity of the financial statements and reviewing significant financial reporting judgments;

(c) review the establishment and maintenance of an effective system of integrated governance, risk management and internal control, across the whole of the organisation’s activities (both clinical and non-clinical), that supports the achievement of the organisation’s objectives;
(d) monitoring compliance with Standing Financial Instructions;
(e) reviewing schedules of losses and compensations and making recommendations to the Board;
(f) reviewing schedules of debtors/creditors balances over £5,000 and 6 months old with explanations/action plans;
(g) Reviewing the arrangements in place to support the Assurance Framework process prepared on behalf of the Board and advising the Board accordingly.

3.1.2 Where the Audit Committee considers there is evidence of ultra vires transactions, evidence of improper acts, or if there are other important matters that the Committee wishes to raise, the Chair of the Audit Committee should raise the matter at a full meeting of the Board. Exceptionally, the matter may need to be referred to Monitor. (To the Director of Finance in the first instance.)

3.1.3 It is the responsibility of the Director of Finance to ensure an adequate Internal Audit service is provided and the Audit Committee shall be involved in the selection process when/if an Internal Audit service provider is changed.

3.2 Director of Finance

3.2.1 The Director of Finance is responsible for:

(a) ensuring there are arrangements to review, evaluate and report on the effectiveness of internal financial control including the establishment of an effective Internal Audit function;
(b) ensuring that the Internal Audit is adequate and meets the NHS mandatory audit standards;
(c) deciding at what stage to involve the police in cases of misappropriation and other irregularities not involving fraud or corruption;
(d) ensuring that an annual internal audit report is prepared for the consideration of the Audit Committee and the Board. The report must cover:

(i) a clear opinion on the effectiveness of internal control in accordance with current assurance framework guidance issued by the Department of Health including for example compliance with control criteria and standards;
(ii) major internal financial control weaknesses discovered;
(iii) progress on the implementation of internal audit recommendations;
(iv) progress against plan over the previous year;
(v) strategic audit plan covering the coming three years;
(vi) a detailed plan for the coming year.

3.2.2 The Director of Finance or designated auditors are entitled without necessarily giving prior notice to require and receive:

(a) access to all records, documents and correspondence relating to any financial or other relevant transactions, including documents of a confidential nature;
(b) access at all reasonable times to any land, premises or members of the Board or employee of the Trust;
(c) the production of any cash, stores or other property of the Trust under a member of the Board and an employee's control; and
(d) explanations concerning any matter under investigation.

3.3 **Role of Internal Audit**

3.3.1 Internal Audit will review, appraise and report upon:

(a) the extent of compliance with, and the financial effect of, relevant established policies, plans and procedures;

(b) the adequacy and application of financial and other related management controls;

(c) the suitability of financial and other related management data;

(d) the extent to which the Trust's assets and interests are accounted for and safeguarded from loss of any kind, arising from:

   (i) fraud and other offences;
   (ii) waste, extravagance, inefficient administration;
   (iii) poor value for money or other causes.

(e) Internal Audit shall also independently verify the assurance statements in accordance with guidance from the Department of Health.

3.3.2 Whenever any matter arises which involves, or is thought to involve, irregularities concerning cash, stores, or other property or any suspected irregularity in the exercise of any function of a pecuniary nature, the Director of Finance must be notified immediately.

3.3.3 The Chief Internal Auditor will normally attend Audit Committee meetings and has a right of access to all Audit Committee members, the Chair and Chief Executive of the Trust.

3.3.4 The Chief Internal Auditor shall be accountable to the Director of Finance. The reporting system for internal audit shall be agreed between the Director of Finance, the Audit Committee and the Chief Internal Auditor. The agreement shall be in writing and shall comply with the guidance on reporting contained in the NHS Internal Audit Standards. The reporting system shall be reviewed at least every three years.

3.4 **External Audit**

3.4.1 The External Auditor is appointed by the Council of Governors and paid for by the Trust. The Audit Committee must ensure a satisfactory and cost-efficient service is delivered. If there are any problems relating to the service provided by the External Auditor, then this should be raised with the External Auditor and referred on to the Audit Committee if the issue cannot be resolved, who in turn should refer the issue to the Council of Governors if still unresolved.

3.5 **Fraud and Corruption**

3.5.1 In line with their responsibilities, the Trust Chief Executive and Director of Finance shall monitor and ensure compliance with Directions issued by the Secretary of State for Health or Monitor on fraud and corruption.

3.5.2 The Trust shall nominate a suitable person to carry out the duties of the Local Counter Fraud Specialist as specified by the Department of Health Fraud and Corruption Manual and guidance.
3.5.3 The Local Counter Fraud Specialist shall report to the Trust Director of Finance and shall work with staff in the Counter Fraud and Security Management Services (CFSMS) and the Regional Counter Fraud and Security Management Services (CFSMS) in accordance with the Department of Health Fraud and Corruption Manual.

3.5.4 The Local Counter Fraud Specialist will provide a written report, at least annually, on counter fraud work within the Trust.

3.6 Security Management

3.6.1 In line with their responsibilities, the Trust Chief Executive will monitor and ensure compliance with Directions issued by the Secretary of State for Health or Monitor on NHS security management.

3.6.2 The Trust shall nominate a suitable person to carry out the duties of the Local Security Management Specialist (LSMS) as specified by the Secretary of State for Health guidance on NHS security management.

3.6.3 The Trust shall nominate a Non-Executive Director to be responsible to the Board for NHS security management.

3.6.4 The Chief Executive has overall responsibility for controlling and coordinating security. However, key tasks are delegated to the Security Management Director (SMD) and the appointed Local Security Management Specialist (LSMS).

4. RESOURCE LIMIT CONTROL

Not applicable to NHS Foundation Trusts.

5. ALLOCATIONS, PLANNING, BUDGETS, BUDGETARY CONTROL, AND MONITORING

5.1 Preparation and Approval of Plans and Budgets

5.1.1 The Chief Executive will compile and submit to the Board a Service Delivery Plan which takes into account financial targets and forecast limits of available resources. The Service Delivery Plan will contain:

(a) a statement of the significant assumptions on which the plan is based;

(b) details of major changes in workload, delivery of services or resources required to achieve the plan.

(c) the views of the Council of Governors.

5.1.2 Prior to the start of the financial year the Director of Finance will, on behalf of the Chief Executive, prepare and submit budgets for approval by the Board. Such budgets will:

(a) be in accordance with the aims and objectives set out in the Service Delivery Plan;

(b) accord with workload and manpower plans;

(c) be produced following discussion with appropriate budget holders;

(d) be prepared within the limits of available funds;
(e) identify potential risks.

5.1.3 The Director of Finance shall monitor financial performance against budget and plan, periodically review them, and report to the Board.

5.1.4 All budget holders must provide information as required by the Director of Finance to enable budgets to be compiled.

5.1.5 All budget holders will sign up to their allocated budgets at the commencement of each financial year.

5.1.6 The Director of Finance has a responsibility to ensure that adequate training is delivered on an on-going basis to budget holders to help them manage successfully.

5.2 Budgetary Delegation

5.2.1 The Chief Executive may delegate the management of a budget to permit the performance of a defined range of activities. This delegation must be in writing and be accompanied by a clear definition of:
(a) the amount of the budget;
(b) the purpose(s) of each budget heading;
(c) individual and group responsibilities;
(d) authority to exercise virement;
(e) achievement of planned levels of service;
(f) the provision of regular reports.

5.2.2 The Chief Executive and delegated budget holders must not exceed the budgetary total or virement limits set by the Board.

5.2.3 Any budgeted funds not required for their designated purpose(s) revert to the immediate control of the Chief Executive, subject to any authorised use of virement.

5.2.4 Non-recurring budgets should not be used to finance recurring expenditure without the authority in writing of the Chief Executive, as advised by the Director of Finance.

5.3 Budgetary Control and Reporting

5.3.1 The Director of Finance will devise and maintain systems of budgetary control. These will include:
(a) monthly financial reports to the Board in a form approved by the Board containing:
   (i) income and expenditure to date showing trends and forecast year-end position;
   (ii) movements in working capital;
   (iii) movements in cash and capital;
   (iv) capital project spend and projected outturn against plan;
   (v) explanations of any material variances from plan;
   (vi) details of any corrective action where necessary and the Chief Executive’s and/or Director of Finance’s view of whether such actions are sufficient to correct the situation;

(b) the issue of timely, accurate and comprehensible advice and financial reports to each budget holder, covering the areas for which they are responsible;
(c) investigation and reporting of variances from financial, workload and workforce budgets;
(d) monitoring of management action to correct variances; and
(e) arrangements for the authorisation of budget transfers.

5.3.2 Each Budget Holder is responsible for ensuring that:
(a) any likely overspending or reduction of income which cannot be met by virement is not incurred without the prior consent of the Board;
(b) the amount provided in the approved budget is not used in whole or in part for any purpose other than that specifically authorised subject to the rules of virement;
(c) no permanent employees are appointed without the approval of the Chief Executive other than those provided for within the available resources and manpower establishment as approved by the Board.

5.3.3 The Chief Executive is responsible for identifying and implementing cost improvements and income generation initiatives in accordance with the requirements of the Service Delivery Plan and a balanced budget.

5.4 Capital Expenditure

5.4.1 The general rules applying to delegation and reporting shall also apply to capital expenditure. (The particular applications relating to capital are contained in SFI 16).
5.5 Monitoring Returns

5.5.1 The Chief Executive is responsible for ensuring that the appropriate monitoring forms are submitted to the requisite monitoring organisation.

6. ANNUAL ACCOUNTS AND REPORTS

6.1 The Director of Finance, on behalf of the Trust, will:

(a) prepare financial returns in accordance with the accounting policies and guidance given by Monitor and the Treasury, the Trust’s accounting policies, and international financial reporting standards (IFRS);

(b) prepare and submit annual financial reports to the Department of Health certified in accordance with current guidelines;

(c) submit financial returns to the Department of Health for each financial year in accordance with the timetable prescribed by the Department of Health.

6.2 The Trust’s annual accounts must be audited by an auditor appointed by the Council of Governors. The Trust’s audited annual accounts must be presented to the Council of Governors, the Members’ annual meeting and made available to the public.

6.3 The Trust will publish an annual report, in accordance with guidelines on local accountability, and present it to the Council of Governors and the Members’ annual meeting. The document will comply with Monitor’s Manual for Accounts.

7. BANK AND GBS ACCOUNTS

7.1 General

7.1.1 The Director of Finance is responsible for managing the Trust’s banking arrangements and for advising the Trust on the provision of banking services and operation of accounts. This advice will take into account guidance/ Directions issued from time to time by Monitor.

7.1.2 The Board shall approve the banking arrangements.

7.2 Bank and GBS Accounts

7.2.1 The Director of Finance is responsible for:

(a) bank accounts and Government Banking System (GBS) accounts;

(b) establishing separate bank accounts for the Trust’s non-exchequer funds;

(c) ensuring payments made from bank or GBS accounts do not exceed the amount credited to the account except where arrangements have been made;

(d) reporting to the Board all arrangements made with the Trust’s bankers for accounts to be overdrawn.

(e) monitoring compliance with Monitor guidance on the level of cleared funds.
7.3 Banking Procedures

7.3.1 The Director of Finance will prepare detailed instructions on the operation of bank and GBS accounts which must include:

(a) the conditions under which each bank and GBS account is to be operated;
(b) those authorised to sign cheques or other orders drawn on the Trust's accounts.

7.3.2 The Director of Finance must advise the Trust's bankers in writing of the conditions under which each account will be operated.

7.4 Tendering and Review

7.4.1 The Director of Finance will review the commercial banking arrangements of the Trust at regular intervals to ensure they reflect best practice and represent best value for money by periodically seeking competitive tenders for the Trust’s commercial banking business.

7.4.2 Competitive tenders should be sought at least every five years. The results of the tendering exercise should be reported to the Board. This review is not necessary for GBS accounts.

8. INCOME, FEES AND CHARGES AND SECURITY OF CASH, CHEQUES AND OTHER NEGOTIABLE INSTRUMENTS

8.1 Income Systems

8.1.1 The Director of Finance is responsible for designing, maintaining and ensuring compliance with systems for the proper recording, invoicing, collection and coding of all monies due.

8.1.2 The Director of Finance is also responsible for the prompt banking of all monies received.

8.2 Fees and Charges

8.2.1 The Trust shall follow the Department of Health's advice in the "Costing" Manual in setting prices for NHS service agreements.

8.2.2 The Director of Finance is responsible for approving and regularly reviewing the level of all fees and charges other than those determined by the Department of Health, Monitor or by Statute. Independent professional advice on matters of valuation shall be taken as necessary. Where sponsorship income (including items in kind such as subsidised goods or loans of equipment) is considered the guidance in the Department of Health’s Commercial Sponsorship – Ethical standards in the NHS shall be followed.

8.2.3 All employees must inform the Director of Finance promptly of money due arising from transactions which they initiate/deal with, including all contracts, leases, tenancy agreements, private patient undertakings and other transactions.

8.3 Debt Recovery

8.3.1 The Director of Finance is responsible for the appropriate recovery action on all outstanding debts.

8.3.2 Income not received should be dealt with in accordance with losses procedures.
8.3.3 Overpayments should be detected (or preferably prevented) and recovery initiated.

8.4 Security of Cash, Cheques and other Negotiable Instruments

8.4.1 The Director of Finance is responsible for:

(a) approving the form of all receipt books, agreement forms, or other means of officially acknowledging or recording monies received or receivable;
(b) ordering and securely controlling any such stationery;
(c) the provision of adequate facilities and systems for employees whose duties include collecting and holding cash, including the provision of safes or lockable cash boxes, the procedures for keys, and for coin operated machines;
(d) prescribing systems and procedures for handling cash and negotiable securities on behalf of the Trust.

8.4.2 Official money shall not under any circumstances be used for the encashment of private cheques or IOUs.

8.4.3 All cheques, postal orders, cash etc., shall be banked intact. Disbursements shall not be made from cash received, except under arrangements approved by the Director of Finance.

8.4.4 The holders of safe keys shall not accept unofficial funds for depositing in their safes unless such deposits are in special sealed envelopes or locked containers. It shall be made clear to the depositors that the Trust is not to be held liable for any loss, and written indemnities must be obtained from the organisation or individuals absolving the Trust from responsibility for any loss.

9. TENDERING AND CONTRACTING PROCEDURE

9.1 Duty to comply with Standing Financial Instructions

9.1.1 The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Financial Instructions.

9.2 EU Directives Governing Public Procurement

9.2.1 Directives by the Council of the European Union promulgated by the Department of Health (DH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders and Standing Financial Instructions.

9.3 Reverse eAuctions

9.3.1 In the event that eAuctions are undertaken the Trust should have policies and procedures in place for the control of all tendering activity carried out through such activities. For further guidance on Reverse eAuctions refer to www.ogc.gov.uk

9.4 Capital Investment Manual and other Department of Health Guidance

9.4.1 The Trust shall comply as far as is practicable with the requirements of the Department of Health "Capital Investment Manual" and "Estate code" in respect of capital investment and estate and property transactions, or equivalent Monitor guidance. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health guidance "The Procurement and Management of Consultants within the NHS".

9.5 Formal Competitive Tendering
9.5.1 **General Applicability:** The Trust shall ensure that competitive tenders are invited for:

- the supply of goods, materials and manufactured articles;
- the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the DH);
- For the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); for disposals.

9.5.2 **Health Care Services:** Where the Trust elects to invite tenders for the supply of healthcare services these Standing Financial Instructions shall apply as far as they are applicable to the tendering procedure and need to be read in conjunction with Standing Financial Instruction No. 18 and No. 19.

9.5.3 **Exceptions and instances where formal tendering need not be applied:** As determined by the Chief Executive or nominated officer, formal tendering procedures may not need to be carried out where:

(a) the estimated expenditure or income does not, or is not reasonably expected to, exceed £70,000
(b) where the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with;
(c) regarding disposals as set out in Standing Financial Instructions No. 18;
(d) the requirement is covered by an existing locally convened contract resulting form a competitive tender;
(e) National agreements established by NHS Supply Chain and the Government Procurement Service (or equivalent bodies) are in place and have been approved where appropriate by the Board;
(f) a consortium / Hub arrangement is in place and a lead organisation has been appointed to carry out tendering activity on behalf of the consortium members;

Formal tendering procedures **may be waived** in the following circumstances:

(g) where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender;
(h) where specialist expertise is required and is available from only one source;
(i) when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
(j) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
(k) for the provision of legal advice and services providing that any legal firm or partnership commissioned by the Trust is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for...
England and Wales in relation to the obtaining of Counsel’s opinion) and are generally recognised as having sufficient expertise in the area of work for which they are commissioned.

The Director of Finance will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

(i) where allowed and provided for in the Capital Investment Manual.

The waiving of competitive tendering procedures should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

Where it is decided that competitive tendering is not applicable and should be waived, the fact of the waiver and the reasons should be documented and recorded in an appropriate Trust record and reported to the Audit Committee at each meeting.

9.5.4 Fair and Adequate Competition: Where the exceptions set out in SFI Nos. 9.1 and 9.5.3 apply, the Trust shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals (unless demonstrated to be a restricted market), having regard to their capacity to supply the goods or materials or to undertake the services or works required.

9.5.5 List of Approved Firms: Where appropriate the Trust shall ensure that the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists. Where in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive (see SFI 9.6.8 List of Approved Firms).

9.5.6 Building and Engineering Construction Works: Competitive Tendering cannot be waived for building and engineering construction works and maintenance (other than in accordance with CONCODE) without Departmental of Health approval.

9.5.7 Items which subsequently breach thresholds after original approval: Items estimated to be below the limits set in this Standing Financial Instruction for which formal tendering procedures are not used which subsequently prove to have a value above such limits shall be reported to the Chief Executive, and be recorded in an appropriate Trust record.

9.6 Contracting/Tendering Procedure

9.6.1 Invitation to tender: Where an e-tendering system is not being used to manage the tender process, the following procedure shall apply. Any e-tendering system used shall replicate the following procedure.

(i) All invitations to tender shall state the date and time as being the latest time for the receipt of tenders.

(ii) All invitations to tender shall state that no tender will be accepted unless:

(a) submitted in a plain sealed package or envelope bearing a pre-printed label supplied by the Trust (or the word "tender" followed by the subject to which it relates) and the latest date and time for the receipt of such tender addressed to the Chief Executive or nominated Manager;

(b) that tender envelopes/packages shall not bear any names or marks indicating the sender. The use of courier/postal services must not
identify the sender on the envelope or on any receipt so required by the deliverer.

(iii) Every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable.

(iv) Every tender for building or engineering works (except for maintenance work, when Estmancode guidance shall be followed) shall embody or be in the terms of the current edition of one of the Joint Contracts Tribunal Standard Forms of Building Contract or Department of the Environment (GC/Wks) Standard forms of contract amended to comply with CONCODE; or, when the content of the work is primarily engineering, the General Conditions of Contract recommended by the Institution of Mechanical and Electrical Engineers and the Association of Consulting Engineers (Form A), or (in the case of civil engineering work) the General Conditions of Contract recommended by the Institute of Civil Engineers, the Association of Consulting Engineers and the Federation of Civil Engineering Contractors. These documents shall be modified and/or amplified to accord with Department of Health guidance and, in minor respects, to cover special features of individual projects.

9.6.2 Receipt and safe custody of tenders

The Chief Executive or his/her nominated representative will be responsible for the receipt, endorsement and safe custody of tenders received until the time appointed for their opening.

The date and time of receipt of each tender shall be endorsed on the tender envelope/package.

9.6.3 Opening tenders and Register of tenders

(i) As soon as practicable after the date and time stated as being the latest time for the receipt of tenders, they shall be opened by two senior officers/managers designated by the Chief Executive and not from the originating department.

(ii) A member of the Trust Board will be required to be one of the two approved persons present for the opening of tenders estimated above £1,000,000. The rules relating to the opening of tenders will need to be read in conjunction with any delegated authority set out in the Trust’s Scheme of Delegation. The Trust’s company secretary will count as a Director for the purpose of opening tenders.

(iii) The ‘originating’ Department will be taken to mean the Department sponsoring or commissioning the tender.

(iv) The involvement of Finance Directorate staff in the preparation of a tender proposal will not preclude the Director of Finance or any approved Senior Manager from the Finance Directorate from serving as one of the two senior managers to open tenders.

(v) All Executive Directors/members will be authorised to open tenders regardless of whether they are from the originating department provided that the other authorised person opening the tenders with them is not from the originating department.

The Trust’s Company Secretary will count as a Director for the purposes of opening tenders.
(vi) Every tender received shall be marked with the date of opening and initialed by those present at the opening.

(vii) A register shall be maintained by the Chief Executive, or a person authorised by him, to show for each set of competitive tender invitations despatched:

- the name of all firms individuals invited;
- the names of firms individuals from which tenders have been received;
- the date the tenders were opened;
- the persons present at the opening;
- the price shown on each tender;
- a note where price alterations have been made on the tender.

Each entry to this register shall be signed by those present.

A note shall be made in the register if any one tender price has had so many alterations that it cannot be readily read or understood.

(viii) Incomplete tenders, i.e. those from which information necessary for the adjudication of the tender is missing, and amended tenders i.e., those amended by the tenderer upon his own initiative either orally or in writing after the due time for receipt, but prior to the opening of other tenders, should be dealt with in the same way as late tenders. (Standing Financial Instruction No. 9.6.5 below).

9.6.4 Admissibility

(i) If for any reason the designated officers are of the opinion that the tenders received are not strictly competitive (for example, because their numbers are insufficient or any are amended, incomplete or qualified) no contract shall be awarded without the approval of the Chief Executive.

(ii) Where only one tender is sought and/or received, the Chief Executive and Director of Finance shall, as far practicable, ensure that the price to be paid is fair and reasonable and will ensure value for money for the Trust.

9.6.5 Late tenders

(i) Tenders received after the due time and date, but prior to the opening of the other tenders, may be considered only if the Chief Executive or his/her nominated officer decides that there are exceptional circumstances i.e. despachted in good time but delayed through no fault of the tenderer.

(ii) Only in the most exceptional circumstances will a tender be considered which is received after the opening of the other tenders and only then if the tenders that have been duly opened have not left the custody of the Chief Executive or his nominated officer or if the process of evaluation and adjudication has not started.

(iii) While decisions as to the admissibility of late, incomplete or amended tenders are under consideration, the tender documents shall be kept strictly confidential, recorded, and held in safe custody by the Chief Executive or his nominated officer.

9.6.6 Acceptance of formal tenders (See overlap with SFI No. 9.7)

(i) Any discussions with a tenderer which are deemed necessary to clarify technical aspects of his tender before the award of a contract will not disqualify the tender.
(ii) The most economically advantageous tender (MEAT), if payment is to be made by the Trust, or the highest, if payment is to be received by the Trust, shall be accepted unless there are good and sufficient reasons to the contrary. Such reasons (for example, evaluation criteria) shall be set out in either the contract file, or other appropriate record.

Where these reasons are applied, in selecting a tenderer, these must be clearly recorded and documented in the contract file, and the reason(s) for not accepting the lowest tender clearly stated.

(iii) No tender shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these Instructions except with the authorisation of the Chief Executive.

(iv) The use of these procedures must demonstrate that the award of the contract was:

(a) not in excess of the going market rate / price current at the time the contract was awarded;

(b) that best value for money was achieved.

(v) All tenders should be treated as confidential and should be retained in an appropriate and suitable facility for inspection. Such retention shall apply to both active and expired contracts.

9.6.7 Tender reports to the Trust Board

Reports to the Trust Board will be made on an exceptional circumstance basis only.

9.6.8 List of approved firms (see SFI No. 9.5.5)

(a) Responsibility for maintaining list

A manager nominated by the Chief Executive shall on behalf of the Trust maintain lists of approved firms from whom tenders and quotations may be invited. These shall be kept under frequent review. The lists shall include all firms who have applied for permission to tender and as to whose technical and financial competence the Trust is satisfied. All suppliers must be made aware of the Trust’s terms and conditions of contract.

(b) Building and Engineering Construction Works

(i) Invitations to tender shall be made only to firms included on the approved list of tenderers compiled in accordance with this Instruction or on the separate maintenance lists compiled in accordance with Estmancode guidance (Health Notice HN(78)147).

(ii) Firms included on the approved list of tenderers shall ensure that when engaging, training, promoting or dismissing employees or in any conditions of employment, shall not discriminate against any person because of colour, race, ethnic or national origins, religion or sex, and will comply with the provisions of the Equal Pay Act 1970, the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Disabled Persons (Employment) Act 1944 and any amending and/or related legislation.

(iii) Firms shall conform at least with the requirements of the Health and Safety at Work Act and any amending and/or other related legislation.
concerned with the health, safety and welfare of workers and other persons, and to any relevant British Standard Code of Practice issued by the British Standard Institution. Firms must provide to the appropriate manager a copy of its safety policy and evidence of the safety of plant and equipment, when requested.

(c) Financial Standing and Technical Competence of Contractors

The Director of Finance may make or institute any enquiries he deems appropriate concerning the financial standing and financial suitability of approved contractors. The Director with lead responsibility for clinical governance will similarly make such enquiries as is felt appropriate to be satisfied as to their technical / medical competence.

9.6.9 Exceptions to using approved contractors

If in the opinion of the Chief Executive and the Director of Finance or the Director with lead responsibility for clinical governance it is impractical to use a potential contractor from the list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), or where a list for whatever reason has not been prepared, the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of those firms that are invited to tender or quote.

An appropriate record in the contract file should be made of the reasons for inviting a tender or quote other than from an approved list.

9.7 Quotations: Competitive and non-competitive

9.7.1 General Position on quotations

Quotations are required where formal tendering procedures are not adopted and where the intended expenditure is reasonably expected to exceed £10,000 but not exceed £70,000 including VAT. For income the threshold shall be £5,000.

9.7.2 Competitive Quotations

(i) Wherever possible Quotations should be obtained from at least 3 firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Trust.

(ii) Quotations should be in writing unless the Chief Executive or his/her nominated officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotations should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.

(iii) All quotations should be treated as confidential and should be retained for inspection.

(iv) The Chief Executive or his/her nominated officer should evaluate the quotation and select the quote which gives the best value for money. If this is not the lowest quotation if payment is to be made by the Trust, or the highest if payment is to be received by the Trust, then the choice made and the reasons why should be recorded in a permanent record.

9.7.3 Non-Competitive Quotations

Non-competitive quotations in writing may be obtained in the following circumstances:
(i) the supply of proprietary or other goods of a special character and the rendering of services of a special character, for which it is not, in the opinion of the responsible officer, possible or desirable to obtain competitive quotations;

(ii) the supply of goods or manufactured articles of any kind which are required quickly and are not obtainable under existing contracts;

(iii) where the goods or services are for building and engineering maintenance the responsible works manager must certify that the first two conditions of this SFI (i.e. (i) and (ii) of this SFI) apply.

9.7.4 Quotations to be within Financial Limits

No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with Standing Financial Instructions except with the authorisation of either the Chief Executive or Director of Finance.

9.8 Authorisation of Tenders and Competitive Quotations

Providing all the conditions and circumstances set out in these Standing Financial Instructions have been fully complied with, formal authorisation and awarding of a contract may be decided by those staff as identified and recorded by the Chief Executive or nominated officer.

The levels of authorisation may be varied or changed and need to be read in conjunction with the Trust Board’s Scheme of Delegation. Formal authorisation must be put in writing. In the case of authorisation by the Trust Board this shall be recorded in their minutes.

9.9 Instances where formal competitive tendering or competitive quotation is not required

Where competitive tendering or a competitive quotation is not required the Trust should adopt one of the following alternatives:

(a) the Trust shall use the NHS Supply Chain for procurement of all appropriate goods and services unless the Chief Executive or nominated officers deem it inappropriate. The decision to use alternative sources must be documented.

(b) the Trust shall use National/Collaborative/Locally (competitively tested) contracts/agreements for the procurement of all appropriate goods and services unless the Chief Executive or nominated officer deem it inappropriate.

9.10 Private Finance for capital procurement (see overlap with SFI No. 16)

The Trust should normally market-test for PFI (Private Finance Initiative funding) when considering a capital procurement. When the Board proposes, or is required, to use finance provided by the private sector the following should apply:

(a) The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.

(b) Where the sum exceeds delegated limits, a business case must be referred to the appropriate Department of Health for approval or treated as per current guidelines.
The proposal must be specifically agreed by the Board of the Trust.

The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

9.11 Compliance requirements for all contracts

The Board may only enter into contracts on behalf of the Trust within the statutory powers delegated to it by Monitor and shall comply with:

(a) The Trust’s Standing Financial Instructions;

(b) EU Directives and other statutory provisions;

(c) any relevant directions including the Capital Investment Manual, Estatecode and guidance on the Procurement and Management of Consultants;

(d) such of the NHS Standard Contract Conditions as are applicable.

(e) contracts with other Foundation Trusts must be in a form compliant with appropriate NHS guidance.

(f) Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

(g) In all contracts made by the Trust, the Board shall endeavour to obtain best value for money by use of all systems in place. The Chief Executive shall nominate an Officer who shall oversee and manage each contract on behalf of the Trust.

9.12 Personnel and Agency or Temporary Staff Contracts

The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

9.13 Healthcare Services Agreements (see overlap with SFI No. 10)

Service agreements with NHS providers for the supply of healthcare services shall be drawn up in accordance with the NHS and Community Care Act 1990 and administered by the Trust. Service agreements are not contracts in law and therefore not enforceable by the courts. However, a contract with another Foundation Trust, being a Public Benefit Corporation, is a legal document and is enforceable in law.

The Chief Executive shall nominate officers to commission service agreements with providers of healthcare in line with a commissioning plan approved by the Board.

9.14 Disposals (See overlap with SFI No. 18)

Competitive Tendering or Quotation procedures shall not apply to the disposal of:

(a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his/her nominated Officer;

(b) obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
(c) items to be disposed of with an estimated sale value of less than £1,000, this figure to be reviewed on a periodic basis;

(d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;

(e) land or buildings concerning which DH/Monitor guidance has been issued but subject to compliance with such guidance.

9.15 In-house Services

9.15.1 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering.

9.15.2 In all cases where the Board determines that in-house services should be subject to competitive tendering the following groups shall be set up:

(a) Specification group, comprising the Chief Executive or nominated Officer/s and specialist.

(b) In-house tender group, comprising a nominee of the Chief Executive and technical support.

(c) Evaluation team, comprising normally a specialist officer, a supplies Officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £250,000 a non-Officer member should be a member of the evaluation team.

9.15.3 All groups should work independently of each other and individual officers may be a member of more than one group but no member of the in-house tender group may participate in the evaluation of tenders.

9.15.4 The evaluation team shall make recommendations to the Board.

9.15.5 The Chief Executive shall nominate an Officer to oversee and manage the contract on behalf of the Trust.

9.16 Applicability of SFIs on Tendering and Contracting to funds held in trust (see overlap with SFI No. 21)

These Instructions shall not only apply to expenditure from exchequer funds but also to works, services and goods purchased from the Trust’s trust funds and private resources.

10. NHS SERVICE AGREEMENTS FOR PROVISION OF SERVICES (see overlap with SFI No. 9.13)

10.1 Service Level Agreements (SLAs)

10.1.1 The Chief Executive, as the Accountable Officer, is responsible for ensuring the Trust enters into suitable Service Level Agreements (SLA) with service commissioners for the provision of NHS services.

10.1.2 All SLAs should aim to implement the agreed priorities contained within the Service Delivery Plan and wherever possible, be based upon integrated care pathways to reflect expected patient experience. In discharging this responsibility, the Chief Executive should take into account:
• the standards of service quality expected;
• the relevant national service framework (if any);
• the provision of reliable information on cost and volume of services;
• the NHS National Performance Assessment Framework;
• that SLAs build where appropriate on existing Joint Investment Plans;
• that SLAs are based on integrated care pathways.

10.2 Involving Partners and jointly managing risk

A good SLA will result from a dialogue of clinicians, users, carers, public health professionals and managers. It will reflect knowledge of local needs and inequalities. This will require the Chief Executive to ensure that the Trust works with all partner agencies involved in both the delivery and the commissioning of the service required. The SLA will apportion responsibility for handling a particular risk to the party or parties in the best position to influence the event and financial arrangements should reflect this. In this way the Trust can jointly manage risk with all interested parties.

10.3 Reports to Board on SLAs

The Chief Executive, as the Accountable Officer, will need to ensure that regular reports are provided to the Board detailing actual and forecast income from the SLA. This will include information on costing arrangements, which increasingly should be based upon Healthcare Resource Groups (HRGs). Where HRGs are unavailable for specific services, all parties should agree a common currency for application across the range of SLAs.

11. COMMISSIONING

[This section is not normally applicable to NHS Foundation Trusts since they are providers rather than commissioners of health services].

12. TERMS OF SERVICE, ALLOWANCES AND PAYMENT OF OFFICERS OF THE TRUST BOARD AND EXECUTIVE COMMITTEE AND EMPLOYEES

12.1 Appointments and Remuneration (see overlap with SO No. 4)

12.1.1 In accordance with the Trust constitution, the Board shall establish an Appointments and Remuneration Committee, with clearly defined terms of reference, specifying which posts fall within its area of responsibility, its composition, and the arrangements for reporting. This will be separate from any committee established by the Council of Governors in relation to the appointment and remuneration of the Chair and other non-Executive directors, and the appointment of the Chief Executive including terms of service.

12.1.2 The Committee will:

(a) advise the Board about appropriate remuneration for the Chief Executive, other officers of the Board employed by the Trust and other senior employees including:

(i) all aspects of salary (including any performance-related elements/bonuses);

(ii) provisions for other benefits, including pensions and cars;

(iii) arrangements for termination of employment and other contractual terms;

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(b) make such recommendations to the Board on the remuneration and terms of
service of officers of the Board (and other senior employees) to ensure they
are fairly rewarded for their individual contribution to the Trust - having proper
regard to the Trust's circumstances and performance and to the provisions of
any national arrangements for such members and staff where appropriate;

(c) monitor and evaluate the performance of individual officers (and
other senior employees);

(d) advise on and oversee appropriate contractual arrangements for such staff
including the proper calculation and scrutiny of termination payments taking
account of such national guidance as is appropriate.

12.1.3 The Committee shall report in writing to the Board the basis for its
recommendations. The Board shall use the report as the basis for their decisions,
but remain accountable for taking decisions on the remuneration and terms of
service of officer members. Minutes of the Board's meetings should record such
decisions.

12.1.4 The Board will consider and need to approve proposals presented by the Chief
Executive for the setting of remuneration and conditions of service for those
employees and Officers not covered by the Committee, other than those for which
the Council of Governors preside.

12.1.5 The Trust will pay allowances to the Chair and non-Officer members of the Board in
accordance with instructions issued by the Council of Governors.

12.2 Funded Establishment

12.2.1 The workforce plans incorporated within the annual budget will form the funded
establishment.

12.2.2 The funded establishment of any department may not be varied without the approval
of the Chief Executive.

12.3 Staff Appointments

12.3.1 No Officer of the Trust Board or employee may engage, re-engage, or re-grade
employees, either on a permanent or temporary nature, or hire agency staff, or
agree to changes in any aspect of remuneration:

(a) unless authorised to do so by the Chief Executive;

(b) within the limit of their approved budget and funded establishment.

12.3.2 The Board will approve procedures presented by the Chief Executive for the
determination of commencing pay rates, condition of service, etc, for employees.

12.4 Processing Payroll

12.4.1 The Director of Finance is responsible for:

(a) specifying timetables for submission of properly authorised time records and
other notifications;

(b) the final determination of pay and allowances;

(c) making payment on agreed dates;

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(d) agreeing method of payment.

12.4.2 The Director of Finance will issue instructions regarding:

(a) verification and documentation of data;

(b) the timetable for receipt and preparation of payroll data and the payment of employees and allowances;

(c) maintenance of subsidiary records for superannuation, income tax, social security and other authorised deductions from pay;

(d) security and confidentiality of payroll information;

(e) checks to be applied to completed payroll before and after payment;

(f) authority to release payroll data under the provisions of the Data Protection Act;

(g) methods of payment available to various categories of employee and officers;

(h) procedures for payment by cheque, bank credit, or cash to employees and officers;

(i) procedures for the recall of cheques and bank credits;

(j) pay advances and their recovery;

(k) maintenance of regular and independent reconciliation of pay control accounts;

(l) separation of duties of preparing records and handling cash;

(m) a system to ensure the recovery from those leaving the employment of the Trust of sums of money and property due by them to the Trust.

12.4.3 Appropriately nominated managers have delegated responsibility for:

(a) submitting time records, and other notifications in accordance with agreed timetables;

(b) completing time records and other notifications in accordance with the Director of Finance's instructions and in the form prescribed by the Director of Finance;

(c) submitting termination forms in the prescribed form immediately upon knowing the effective date of an employee's or officer's resignation, termination or retirement. Where an employee fails to report for duty or to fulfill obligations in circumstances that suggest they have left without notice, the Director of Finance must be informed immediately.

12.4.4 Regardless of the arrangements for providing the payroll service, the Director of Finance shall ensure that the chosen method is supported by appropriate (contracted) terms and conditions, adequate internal controls and audit review procedures and that suitable arrangements are made for the collection of payroll deductions and payment of these to appropriate bodies.

12.5 Contracts of Employment

12.5.1 The Board shall delegate responsibility to an Officer for:
(a) ensuring that all employees are issued with a Contract of Employment in a form approved by the Board and which complies with employment legislation;
(b) dealing with variations to, or termination of, contracts of employment.

13. NON-PAY EXPENDITURE

13.1 Delegation of Authority

13.1.1 The Board will approve the level of non-pay expenditure on an annual basis and the Chief Executive will determine the level of delegation to budget managers.

13.1.2 The Chief Executive will set out:
(a) the list of managers who are authorised to place requisitions for the supply of goods and services;
(b) the maximum level of each requisition and the system for authorisation above that level.

13.1.3 The Chief Executive shall set out procedures on the seeking of professional advice regarding the supply of goods and services.

13.2 Choice, Requisitioning, Ordering, Receipt and Payment for Goods and Services (see overlap with Standing Financial Instruction No. 9)

13.2.1 Requisitioning

The requisitioner, in choosing the item to be supplied (or the service to be performed) shall always obtain the best value for money for the Trust. In so doing, the advice of the Trust’s adviser on supply shall be sought. Where this advice is not acceptable to the requisitioner, the Director of Finance (and/or the Chief Executive) shall be consulted.

13.2.2 System of Payment and Payment Verification

The Director of Finance shall be responsible for the prompt payment of accounts and claims. Payment of contract invoices shall be in accordance with contract terms, or otherwise, in accordance with national guidance.

13.2.3 The Director of Finance will:
(a) advise the Board regarding the setting of thresholds above which quotations (competitive or otherwise) or formal tenders must be obtained; and, once approved, the thresholds should be incorporated in Standing Orders and Standing Financial Instructions and regularly reviewed;
(b) prepare procedural instructions or guidance within the Scheme of Delegation on the obtaining of goods, works and services incorporating the thresholds;
(c) be responsible for the prompt payment of all properly authorised accounts and claims;
(d) be responsible for designing and maintaining a system of verification, recording and payment of all amounts payable. The system shall provide for:
   (i) A list of Board employees (including specimens of their signatures) authorised to certify invoices.
(ii) Certification that:

- goods have been duly received, examined and are in accordance with specification and the prices are correct;
- work done or services rendered have been satisfactorily carried out in accordance with the order, and, where applicable, the materials used are of the requisite standard and the charges are correct;
- in the case of contracts based on the measurement of time, materials or expenses, the time charged is in accordance with the time sheets, the rates of labour are in accordance with the appropriate rates, the materials have been checked as regards quantity, quality, and price and the charges for the use of vehicles, plant and machinery have been examined;
- where appropriate, the expenditure is in accordance with regulations and all necessary authorisations have been obtained;
- the account is arithmetically correct;
- the account is in order for payment.

(iii) A timetable and system for submission to the Director of Finance of accounts for payment; provision shall be made for the early submission of accounts subject to cash discounts or otherwise requiring early payment.

(iv) Instructions to employees regarding the handling and payment of accounts within the Finance Department.

(e) be responsible for ensuring that payment for goods and services is only made once the goods and services are received. The only exceptions are set out in SFI No. 21.2.4 below.

13.2.4 Prepayments

Prepayments are only permitted where exceptional circumstances apply. In such instances:

(a) Prepayments are only permitted where the financial advantages outweigh the disadvantages (i.e. cash flows must be discounted to NPV using the National Loans Fund (NLF) rate plus 2%).

(b) The appropriate officer must provide, in the form of a written report, a case setting out all relevant circumstances of the purchase. The report must set out the effects on the Trust if the supplier is at some time during the course of the prepayment agreement unable to meet his commitments;

(c) The Director of Finance will need to be satisfied with the proposed arrangements before contractual arrangements proceed (taking into account the EU public procurement rules where the contract is above a stipulated financial threshold);

(d) The Budget holder is responsible for ensuring that all items due under a prepayment contract are received and they must immediately inform the appropriate Director or Chief Executive if problems are encountered.

13.2.5 Official orders
Official Orders must:

(a) be consecutively numbered;
(b) be in a form approved by the Director of Finance;
(c) state the Trust’s terms and conditions of trade;
(d) only be issued to, and used by, those duly authorised by the Chief Executive.

13.2.6 Duties of Managers and Officers

Managers and officers must ensure that they comply fully with the guidance and limits specified by the Director of Finance and that:

(a) all contracts (except as otherwise provided for in the Scheme of Delegation), leases, tenancy agreements and other commitments which may result in a liability are notified to the Director of Finance in advance of any commitment being made;
(b) contracts above specified thresholds are advertised and awarded in accordance with EU rules on public procurement;
(c) where consultancy advice is being obtained, the procurement of such advice must be in accordance with guidance issued by the Department of Health;
(d) no order shall be issued for any item or items to any firm which has made an offer of gifts, reward or benefit to directors or employees, other than:
   (i) isolated gifts of a trivial character or inexpensive seasonal gifts, such as calendars;
   (ii) conventional hospitality, such as lunches in the course of working visits;

(This provision needs to be read in conjunction with Standing Order No. 6 and the principles outlined in the national guidance contained in HSG 93(5) “Standards of Business Conduct for NHS Staff”);
(e) no requisition/order is placed for any item or items for which there is no Budget provision unless authorised by the Director of Finance on behalf of the Chief Executive;
(f) all goods, services, or works are ordered on an official order except works and services executed in accordance with a contract and purchases from petty cash;
(g) verbal orders must only be issued very exceptionally - by an employee designated by the Chief Executive and only in cases of emergency or urgent necessity. These must be confirmed by an official order and clearly marked “Confirmation Order”;
(h) orders are not split or otherwise placed in a manner devised so as to avoid the financial thresholds;
(i) goods are not taken on trial or loan in circumstances that could commit the Trust to a future uncompetitive purchase;
(j) changes to the list of employees and Officers authorised to certify invoices are notified to the Director of Finance;
(k) purchases from petty cash are restricted in value and by type of purchase in accordance with instructions issued by the Director of Finance;

(l) petty cash records are maintained in a form as determined by the Director of Finance.

13.2.7 The Chief Executive and Director of Finance shall ensure that the arrangements for financial control and financial audit of building and engineering contracts and property transactions comply with the guidance contained within CONCODE and ESTATECODE. The technical audit of these contracts shall be the responsibility of the relevant Director.

13.3 Joint Finance Arrangements with Local Authorities and Voluntary Bodies (see overlap with Standing Order No. 9.1)

13.3.1 Payments to local authorities and voluntary organisations made under the powers of section 28A of the NHS Act shall comply with procedures laid down by the Director of Finance which shall be in accordance with these Acts. (See overlap with Standing Order No. 9.1)

14. EXTERNAL BORROWING

14.1.1 The Director of Finance will advise the Board concerning the Trust’s ability to pay dividend on, and repay Public Dividend Capital and any proposed new borrowing, within the limits set by the Department of Health. The Director of Finance is also responsible for reporting periodically to the Board concerning the PDC debt and all loans and overdrafts.

14.1.2 The Board will agree the list of employees (including specimens of their signatures) who are authorised to make short term borrowings on behalf of the Trust. This must contain the Chief Executive and the Director of Finance.

14.1.3 The Director of Finance must prepare detailed procedural instructions concerning applications for loans and overdrafts.

14.1.4 All short-term borrowings should be kept to the minimum period of time possible, consistent with the overall cashflow position, represent good value for money, and comply with the latest guidance from the Department of Health.

14.1.5 Any short-term borrowing must be with the authority of two members of an authorised panel, one of which must be the Chief Executive or the Director of Finance. The Board must be made aware of all short term borrowings at the next Board meeting.

14.1.6 All long-term borrowing must be consistent with the plans outlined in the current Service Delivery Plan and be approved by the Trust Board.

14.2 Investments

14.2.1 Cash surpluses must be held only in such public or private sector investments as notified by Monitor and authorised by the Board.

14.2.2 The Director of Finance is responsible for advising the Board on investments and shall report periodically to the Board concerning the performance of investments held.

14.2.3 The Director of Finance will prepare detailed procedural instructions on the operation of investment accounts and on the records to be maintained.
15. FINANCIAL FRAMEWORK

15.1.1 The Director of Finance should ensure that members of the Board are aware of Monitor’s Financial Framework. This document contains directions which the Trust must follow.

16. CAPITAL INVESTMENT, PRIVATE FINANCING, FIXED ASSET REGISTERS AND SECURITY OF ASSETS

16.1 Capital Investment

16.1.1 The Chief Executive:

(a) shall ensure that there is an adequate appraisal and approval process in place for determining capital expenditure priorities and the effect of each proposal upon business plans;

(b) is responsible for the management of all stages of capital schemes and for ensuring that schemes are delivered on time and to cost;

(c) shall ensure that the capital investment is not undertaken without confirmation of purchaser(s) support and the availability of resources to finance all revenue consequences, including capital charges.

16.1.2 For every capital expenditure proposal the Chief Executive shall ensure:

(a) that a business case (in line with the guidance contained within the Capital Investment Manual) is produced setting out:

   (i) an option appraisal of potential benefits compared with known costs to determine the option with the highest ratio of benefits to costs;

   (ii) the involvement of appropriate Trust personnel and external agencies;

   (iii) appropriate project management and control arrangements;

(b) that the Director of Finance has certified professionally to the costs and revenue consequences detailed in the business case.

16.1.3 For capital schemes where the contracts stipulate stage payments, the Chief Executive will issue procedures for their management, incorporating the recommendations of “ESTATECODE”.

16.1.4 The Director of Finance shall assess on an annual basis the requirement for the operation of the construction industry tax deduction scheme in accordance with Inland Revenue guidance.

16.1.5 The Director of Finance shall issue procedures for the regular reporting of expenditure and commitment against authorised expenditure.

16.1.6 The approval of a capital programme shall not constitute approval for expenditure on any scheme.

The Chief Executive shall issue to the manager responsible for any scheme:

(a) specific authority to commit expenditure;

(b) authority to proceed to tender (see overlap with SFI No. 9.6);
approval to accept a successful tender (see overlap with SFI No. 9.6).

The Chief Executive will issue a scheme of delegation for capital investment management in accordance with "ESTATECODE" guidance and the Trust's Standing Orders.

16.1.7 The Director of Finance shall issue procedures governing the financial management, including variations to contract, of capital investment projects and valuation for accounting purposes. These procedures shall fully take into account the delegated limits for capital schemes included in Annex C of HSC (1999) 246.

16.2 Private Finance (see overlap with SFI No. 9.10)

16.2.1 The Trust should normally test for PFI when considering capital procurement. When the Trust proposes to use finance which is to be provided other than through its Allocations, the following procedures shall apply:

(a) The Director of Finance shall demonstrate that the use of private finance represents value for money and genuinely transfers significant risk to the private sector.

(b) Where the sum involved exceeds delegated limits, the business case must be referred to the Department of Health or in line with any current guidelines.

(c) The proposal must be specifically agreed by the Board.

16.3 Asset Registers

16.3.1 The Chief Executive is responsible for the maintenance of registers of assets, taking account of the advice of the Director of Finance concerning the form of any register and the method of updating, and arranging for a physical check of assets against the asset register to be conducted once a year.

16.3.2 Each Trust shall maintain an asset register recording fixed assets. The minimum data set to be held within these registers shall be as specified by accounting standards.

16.3.3 Additions to the fixed asset register must be clearly identified to an appropriate budget holder and be validated by reference to:

(a) properly authorised and approved agreements, architect's certificates, supplier's invoices and other documentary evidence in respect of purchases from third parties;

(b) stores, requisitions and wages records for own materials and labour including appropriate overheads;

(c) lease agreements in respect of assets held under a finance lease and capitalised.

16.3.4 Where capital assets are sold, scrapped, lost or otherwise disposed of, their value must be removed from the accounting records and each disposal must be validated by reference to authorisation documents and invoices (where appropriate).

16.3.5 The Director of Finance shall approve procedures for reconciling balances on fixed assets accounts in ledgers against balances on fixed asset registers.

16.3.6 The value of each asset shall be indexed to current values in accordance with methods specified in the Capital Accounting Manual issued by the Department of Health.
16.3.7 The value of each asset shall be depreciated using methods and rates as specified by accounting standards.

16.3.8 The Director of Finance of the Trust shall calculate and pay capital charges as specified by Monitor.

16.4 **Security of Assets**

16.4.1 The overall control of fixed assets is the responsibility of the Chief Executive.

16.4.2 Asset control procedures (including fixed assets, cash, cheques and negotiable instruments, and also including donated assets) must be approved by the Director of Finance. This procedure shall make provision for:

(a) recording managerial responsibility for each asset;
(b) identification of additions and disposals;
(c) identification of all repairs and maintenance expenses;
(d) physical security of assets;
(e) periodic verification of the existence of, condition of, and title to, assets recorded;
(f) identification and reporting of all costs associated with the retention of an asset;
(g) reporting, recording and safekeeping of cash, cheques, and negotiable instruments.

16.4.3 All discrepancies revealed by verification of physical assets to fixed asset register shall be notified to the Director of Finance.

16.4.4 Whilst each employee and officer has a responsibility for the security of property of the Trust, it is the responsibility of Board members and senior employees in all disciplines to apply such appropriate routine security practices in relation to NHS property as may be determined by the Board. Any breach of agreed security practices must be reported in accordance with agreed procedures.

16.4.5 Any damage to the Trust’s premises, vehicles and equipment, or any loss of equipment, stores or supplies must be reported by Board members and employees in accordance with the procedure for reporting losses.

16.4.6 Where practical, assets should be marked as Trust property.

**17. STORES AND RECEIPT OF GOODS**

17.1 **General position**

17.1.1 Stores, defined in terms of controlled stores and departmental stores (for immediate use) should be:

(a) kept to a minimum;
(b) subjected to annual stock take;
(c) valued at the lower of cost and net realisable value.
17.2 Control of Stores, Stocktaking, condemnations and disposal

17.2.1 Subject to the responsibility of the Director of Finance for the systems of control, overall responsibility for the control of stores shall be delegated to an employee by the Chief Executive. The day-to-day responsibility may be delegated by him to departmental employees and stores managers/keepers, subject to such delegation being entered in a record available to the Director of Finance. The control of any Pharmaceutical stocks shall be the responsibility of a designated Pharmaceutical Officer; the control of any fuel oil and coal of a designated estates manager.

17.2.2 The responsibility for security arrangements and the custody of keys for any stores and locations shall be clearly defined in writing by the designated manager/Pharmaceutical Officer. Wherever practicable, stocks should be marked as health service property.

17.2.3 The Director of Finance shall set out procedures and systems to regulate the stores including records for receipt of goods, issues, and returns to stores, and losses.

17.2.4 Stocktaking arrangements shall be agreed with the Director of Finance and there shall be a physical check covering all items in store at least once a year.

17.2.5 Where a complete system of stores control is not justified, alternative arrangements shall require the approval of the Director of Finance.

17.2.6 The designated Manager/Pharmaceutical Officer shall be responsible for a system approved by the Director of Finance for a review of slow moving and obsolete items and for condemnation, disposal, and replacement of all unserviceable articles. The designated Officer shall report to the Director of Finance any evidence of significant overstocking and of any negligence or malpractice (see also overlap with SFI No. 25 Disposals and Condemnations, Losses and Special Payments). Procedures for the disposal of obsolete stock shall follow the procedures set out for disposal of all surplus and obsolete goods.

17.3 Goods supplied by NHS Supply Chain

17.3.1 For goods supplied via the NHS Supply Chain, the Chief Executive shall identify those authorised to requisition and accept goods from the store. The authorised person shall check receipt against the delivery note before forwarding this to the Director of Finance who shall satisfy him/herself that the goods have been received before accepting the recharge.
18. DISPOSALS AND CONDEMNATIONS, LOSSES AND SPECIAL PAYMENTS

18.1 Disposals and Condemnations

18.1.1 Procedures: The Director of Finance must prepare detailed procedures for the disposal of assets including condemnations, and ensure that these are notified to managers.

18.1.2 When it is decided to dispose of a Trust asset, the Head of Department or authorised deputy will determine and advise the Director of Finance of the estimated market value of the item, taking account of professional advice where appropriate.

18.1.3 All unserviceable articles shall be:

(a) condemned or otherwise disposed of by an employee authorised for that purpose by the Director of Finance;

(b) recorded by the Condemning Officer in a form approved by the Director of Finance which will indicate whether the articles are to be converted, destroyed or otherwise disposed of. All entries shall be confirmed by the countersignature of a second employee authorised for the purpose by the Director of Finance.

18.1.4 The Condemning Officer shall satisfy him/herself as to whether or not there is evidence of negligence in use and shall report any such evidence to the Director of Finance who will take the appropriate action.

18.2 Losses and Special Payments

18.2.1 Procedures: The Director of Finance must prepare procedural instructions on the recording of and accounting for condemnations, losses, and special payments.

18.2.2 Any employee or Officer discovering or suspecting a loss of any kind must either immediately inform their head of department, who must immediately inform the Chief Executive and the Director of Finance or inform an Officer charged with responsibility for responding to concerns involving loss. This Officer will then appropriately inform the Director of Finance and/or Chief Executive. Where a criminal offence is suspected, the Director of Finance must immediately inform the police if theft or arson is involved. In cases of fraud and corruption or of anomalies which may indicate fraud or corruption, the Director of Finance must inform the relevant LCFS and CFSMS regional team in accordance with Secretary of State for Health’s Directions.

The Director of Finance must notify the Counter Fraud and Security Management Services (CFSMS) and the External Auditor of all frauds.

18.2.3 For losses apparently caused by theft, arson, neglect of duty or gross carelessness, except if trivial, the Director of Finance must immediately notify:

(a) the Board,

(b) the External Auditor.

18.2.4 Within limits delegated to it by the Department of Health, the Board shall approve the writing-off of losses.

18.2.5 The Director of Finance shall be authorised to take any necessary steps to safeguard the Trust’s interests in bankruptcies and company liquidations.
18.2.6 For any loss, the Director of Finance should consider whether any insurance claim can be made.

18.2.7 The Director of Finance shall maintain a Losses and Special Payments Register in which write-off action is recorded.

18.2.8 No special payments exceeding delegated limits shall be made without the prior approval of the Department of Health.

18.2.9 All losses and special payments must be reported to the Audit Committee at every meeting.

19. INFORMATION TECHNOLOGY

19.1 Responsibilities and duties of the Director of Finance

19.1.1 The Director of Finance, who is responsible for the accuracy and security of the computerised financial data of the Trust, shall:

(a) devise and implement any necessary procedures to ensure adequate (reasonable) protection of the Trust's data, programs and computer hardware for which the Director is responsible from accidental or intentional disclosure to unauthorised persons, deletion or modification, theft or damage, having due regard for the Data Protection Act 1998;

(b) ensure that adequate (reasonable) controls exist over data entry, processing, storage, transmission and output to ensure security, privacy, accuracy, completeness, and timeliness of the data, as well as the efficient and effective operation of the system;

(c) ensure that adequate controls exist such that the computer operation is separated from development, maintenance and amendment;

(d) ensure that an adequate management (audit) trail exists through the computerised system and that such computer audit reviews as the Director may consider necessary are being carried out.

19.1.2 The Director of Finance shall need to ensure that new financial systems and amendments to current financial systems are developed in a controlled manner and thoroughly tested prior to implementation. Where this is undertaken by another organisation, assurances of adequacy must be obtained from them prior to implementation.

19.1.3 The Head of Communications shall publish and maintain a Freedom of Information (FOI) Publication Scheme, or adopt a model Publication Scheme approved by the Information Commissioner. A Publication Scheme is a complete guide to the information routinely published by a public authority. It describes the classes or types of information about our Trust that we make publicly available.

19.2 Responsibilities and duties of other Directors and Officers in relation to computer systems of a general application

19.2.1 In the case of computer systems which are proposed General Applications (i.e. normally those applications which the majority of Trust's in the Region wish to sponsor jointly) all responsible directors and employees will send to the Director of Finance:

(a) details of the outline design of the system;
(b) in the case of packages acquired either from a commercial organisation, from the NHS, or from another public sector organisation, the operational requirement.

19.3 Contracts for computer services with other health bodies or outside agencies

19.3.1 The Director of Finance shall ensure that contracts for computer services for financial applications with another health organisation or any other agency shall clearly define the responsibility of all parties for the security, privacy, accuracy, completeness, and timeliness of data during processing, transmission and storage. The contract should also ensure rights of access for audit purposes.

19.3.2 Where another health organisation or any other agency provides a computer service for financial applications, the Director of Finance shall periodically seek assurances that adequate controls are in operation.

19.4 Risk Assessment

19.4.1 The Director of Finance shall ensure that risks to the Trust arising from the use of IT are effectively identified and considered and appropriate action taken to mitigate or control risk. This shall include the preparation and testing of appropriate disaster recovery plans.

19.5 Requirements for computer systems which have an impact on corporate financial systems

19.5.1 Where computer systems have an impact on corporate financial systems the Director of Finance shall need to be satisfied that:

(a) systems acquisition, development and maintenance are in line with corporate policies such as an Information Technology Strategy;

(b) data produced for use with financial systems is adequate, accurate, complete and timely, and that a management (audit) trail exists;

(c) Director of Finance staff have access to such data;

(d) such computer audit reviews as are considered necessary are being carried out.

20. PATIENTS' PROPERTY

20.1 The Trust has a responsibility to provide safe custody for money and other personal property (hereafter referred to as "property") handed in by patients, in the possession of unconscious or confused patients, or found in the possession of patients dying in hospital or dead on arrival.

20.2 The Chief Executive is responsible for ensuring that patients or their guardians, as appropriate, are informed before or at admission by:

- notices and information booklets; \(\text{notices are subject to sensitivity guidance}\)
- hospital admission documentation and property records;
- the oral advice of administrative and nursing staff responsible for admissions,

that the Trust will not accept responsibility or liability for patients' property brought into Health Service premises, unless it is handed in for safe custody and a copy of an official patients' property record is obtained as a receipt.

20.3 The Director of Finance must provide detailed written instructions on the collection, custody, investment, recording, safekeeping, and disposal of patients' property.
(including instructions on the disposal of the property of deceased patients and of patients transferred to other premises) for all staff whose duty is to administer, in any way, the property of patients. Due care should be exercised in the management of a patient's money in order to maximise the benefits to the patient.

20.4 Where Department of Health instructions require the opening of separate accounts for patients' moneys, these shall be opened and operated under arrangements agreed by the Director of Finance.

20.5 In all cases where property of a deceased patient is of a total value in excess of £5,000 (or such other amount as may be prescribed by any amendment to the Administration of Estates, Small Payments, Act 1965), the production of Probate or Letters of Administration shall be required before any of the property is released. Where the total value of property is £5,000 or less, forms of indemnity shall be obtained.

20.6 Staff should be informed, on appointment, by the appropriate departmental or senior manager of their responsibilities and duties for the administration of the property of patients.

20.7 Where patients' property or income is received for specific purposes and held for safekeeping the property or income shall be used only for that purpose, unless any variation is approved by the donor or patient in writing.

21. FUNDS HELD ON TRUST

21.1 Corporate Trustee

21.1.1 Standing Order No. 2.7 outlines the Trust's responsibilities as a corporate trustee for the management of funds it holds on trust, along with SO 4.8.3 that defines the need for compliance with Charities Commission latest guidance and best practice.

21.1.2 The discharge of the Trust's corporate trustee responsibilities are distinct from its responsibilities for exchequer funds and may not necessarily be discharged in the same manner, but there must still be adherence to the overriding general principles of financial regularity, prudence and propriety. Trustee responsibilities cover both charitable and non-charitable purposes.

21.1.3 The Director of Finance shall ensure that each trust fund which the Trust is responsible for managing is managed appropriately with regard to its purpose and to its requirements.

21.2 Accountability to Charity Commission and Secretary of State for Health

21.2.1 The trustee responsibilities must be discharged separately and full recognition given to the Trust's dual accountabilities to the Charity Commission for charitable funds held on trust and to the Secretary of State for all funds held on trust.

21.2.2 The Schedule of Matters Reserved to the Board and the Scheme of Delegation make clear where decisions regarding the exercise of discretion regarding the disposal and use of the funds are to be taken and by whom. All Trust Board members and Trust officers must take account of that guidance before taking action.

21.3 Applicability of Standing Financial Instructions to funds held on Trust

21.3.1 In so far as it is possible to do so, most of the sections of these Standing Financial Instructions will apply to the management of funds held on trust. (See overlap with SFI No 9.16).
21.3.2 The over-riding principle is that the integrity of each Trust must be maintained and statutory and Trust obligations met. Materiality must be assessed separately from Exchequer activities and funds.

22. **ACCEPTANCE OF GIFTS BY STAFF AND LINK TO STANDARDS OF BUSINESS CONDUCT**

22.1 The Director of Finance shall ensure that all staff are made aware of the Trust policy on acceptance of gifts and other benefits in kind by staff. This policy follows the guidance contained in the Department of Health circular HSG (93) 5 ‘Standards of Business Conduct for NHS Staff’ and is also deemed to be an integral part of these Standing Financial Instructions.

23. **RETENTION OF RECORDS**

23.1 The Chief Executive shall be responsible for maintaining archives for all records required to be retained in accordance with Department of Health guidelines.

23.2 The records held in archives shall be capable of retrieval by authorised persons.

23.3 Records held in accordance with latest Department of Health guidance shall only be destroyed at the express instigation of the Chief Executive. Detail shall be maintained of records so destroyed.

24. **RISK MANAGEMENT AND INSURANCE**

24.1 **Programme of Risk Management**

24.1.1 The Chief Executive shall ensure that the Trust has a programme of risk management, in accordance with current Department of Health assurance framework requirements, which must be approved and monitored by the Board.

24.1.2 The programme of risk management shall include:

(a) a process for identifying and quantifying risks and potential liabilities;

(b) engendering among all levels of staff a positive attitude towards the control of risk;

(c) management processes to ensure all significant risks and potential liabilities are addressed including effective systems of internal control, cost effective insurance cover, and decisions on the acceptable level of retained risk;

(d) contingency plans to offset the impact of adverse events;

(e) audit arrangements including; Internal Audit, clinical audit, health and safety review;

(f) a clear indication of which risks shall be insured;

(g) arrangements to review the risk management programme.

24.1.3 The existence, integration and evaluation of the above elements will assist in providing a basis to make a Statement on the effectiveness of Internal Control (SIC) within the Annual Report and Accounts as required by current Department of Health guidance.
24.2 Insurance: Risk Pooling Schemes administered by NHSLA

24.2.1 The Board shall decide if the Trust will insure through the risk pooling schemes administered by the NHS Litigation Authority or self insure for some or all of the risks covered by the risk pooling schemes. If the Board decides not to use the risk pooling schemes for any of the risk areas (clinical, property and employers/third party liability) covered by the scheme this decision shall be reviewed annually.

24.3 Arrangements to be followed by the Board in agreeing Insurance cover

24.3.1 Where the Board decides to use the risk pooling schemes administered by the NHS Litigation Authority the Director of Finance shall ensure that the arrangements entered into are appropriate and complementary to the risk management programme. The Director of Finance shall ensure that documented procedures cover these arrangements.

24.3.2 Where the Board decides not to use the risk pooling schemes administered by the NHS Litigation Authority for one or other of the risks covered by the schemes, the Director of Finance shall ensure that the Board is informed of the nature and extent of the risks that are self insured as a result of this decision. The Director of Finance will draw up formal documented procedures for the management of any claims arising from third parties and payments in respect of losses which will not be reimbursed.

24.3.3 All the risk pooling schemes require scheme members to make some contribution to the settlement of claims (the 'deductible'). The Director of Finance should ensure documented procedures also cover the management of claims and payments below the deductible in each case.
## Delegated Financial Limits

This document should be read in conjunction with the Trust constitution, Standing Financial Instructions and the supporting notes on the following page.

### Budgeting and Budget Setting

<table>
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<td>Virement (within cost centre and between subjective groupings)</td>
<td>Virement (within cost centres in the same division)</td>
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<tr>
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### Procurement of Goods and Services

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### Charitable Funds

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### Pay Related Activity

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**Table Notes:**
- **Note 1:** [Link to Note 1]
- **Note 2:** [Link to Note 2]
- **Note 3:** [Link to Note 3]
- **Note 4:** [Link to Note 4]
- **Note 5:** [Link to Note 5]
- **Note 6:** [Link to Note 6]
- **Note 7:** [Link to Note 7]
- **Note 8:** [Link to Note 8]
## Western Sussex Hospitals NHS Foundation Trust

**Delegated Financial Limits**

This document should be read in conjunction with the Trust constitution, Standing Financial Instructions and the supporting notes on the following page. Nothing in this document should be taken as obviating the need for sound financial control and budgetary management.

Where \( \leq \) is shown this means that no upper financial limit to the delegated authority from the Trust Board. In all cases the additional information column should be reviewed to identify any additional criteria that must be complied with.

### Table: Delegated Financial Limits

| Action | Additional Information | Council of Governors | Finance and Investment Committee | Remuneration Committee | Charitable Funds Committee | Executive Team | Management Board | Chief Executive | Director of Finance | Executive Team Directors | Director / Chief of Service | Deputy Director | Assistant Director / Associate Director | Head of Service | General Manager | Operational Manager | Budget Holder | Section Head / Site Note 2 |
| **Business Cases** | | | | | | | | | | | | | | | | | | | |
| Approve a business case | | Trust Board | £500,000 | ≤ £500,000 | | | | | | | | | | | | | | | |
| Authorisation of New Drugs | | | | | | | | | | | | | | | | | | | |
| Invoice Request/Sales Order Request for Non Contract Invoice | | | | | | | | | | | | | | | | | | | |
| Invoice Request/Sales Order Request for Contract Invoice | | | | | | | | | | | | | | | | | | | |
| Authorise the raising of a credit note | | | | | | | | | | | | | | | | | | | |
| Authorise a debit note-off | | Note 2 | £50,000 | ≤ £50,000 | | | | | | | | | | | | | | | |
| Authorise Substitution of a Credit note | | | | | | | | | | | | | | | | | | | |
| Sign a legal contract | | | | | | | | | | | | | | | | | | | |
| Sign a service level agreement | | | | | | | | | | | | | | | | | | | |
| Agree variations to a contract or service level agreement | | | | | | | | | | | | | | | | | | | |
| Setting of fees and charges | | | | | | | | | | | | | | | | | | | |
| Setting of fees and charges | | | | | | | | | | | | | | | | | | | |
| **Banking and Cash** | | | | | | | | | | | | | | | | | | | |
| Authorisation of Payment Runs (BACs, Cheque or RT?F) | | | | | | | | | | | | | | | | | | | |
| Cheque or BACS Payment | | | | | | | | | | | | | | | | | | | |
| Cheque or BACS Payment | | | | | | | | | | | | | | | | | | | |
| Cheque or BACS Payment | | | | | | | | | | | | | | | | | | | |
| Signing a Cheque (cheque book fund) | | | | | | | | | | | | | | | | | | | |
| Approval of Loan Applications | | | | | | | | | | | | | | | | | | | |
| Investment of Funds | | | | | | | | | | | | | | | | | | | |
| Policy Cash | | | | | | | | | | | | | | | | | | | |
| Return of Patient Monies | | | | | | | | | | | | | | | | | | | |
| **Losses and Special Payments** | | | | | | | | | | | | | | | | | | | |
| Special and Special and Special Payments | | | | | | | | | | | | | | | | | | | |
| Special and Special and Special Payments | | | | | | | | | | | | | | | | | | | |
| Debt Write-off and Claims Abandoned | | Note 2 | £50,000 | ≤ £50,000 | | | | | | | | | | | | | | | |

Note 1: Executive Team Directors (see Note 1)

Note 2: Director / Chief of Service (see Note 2)

Note 3: Assistant Director / Associate Director (see Note 3)
## Western Sussex Hospitals NHS Foundation Trust
### Delegated Financial Limits

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<th>Deputy Director of Charity Operations</th>
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</thead>
<tbody>
<tr>
<td>Budgeting and Budget Setting</td>
<td>Review and Recommendation of Annual Budget</td>
<td>Subject to requirements set out in Virement Policy</td>
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<td>Virement (within cost centre and within subjective grouping)</td>
<td>Subject to requirements set out in Virement Policy</td>
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<td>Virement (between cost centres in the same division)</td>
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<td>Virement (between divisions)</td>
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<td>Virement (between division and reserves/corporate income)</td>
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<td>Procurement of Goods and Services</td>
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<td>Award a legal contract</td>
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<td>Authorise a non-purchase order invoice</td>
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<td>Charitable Funds</td>
<td>Authorise spend against a charitable fund</td>
<td>Must be an authorised signatory for fund in question</td>
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<th>Other Directorate (see Note 4)</th>
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# Western Sussex Hospitals NHS Foundation Trust

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### Action Additional Information

#### Business Cases
- **Approve a business case**
  - Total value of business case over project term
  - Subject to review and recommendation by Mgt Board and/or F&I Cttee

#### Invoices
- **Invoice Request/Sales Order Request for Non Contract Invoice**
  - Estimated cost per annum

#### Authorisation of New Drugs
- Authorised to be covered by approved SLA or Contract

### Finance Directorate (see Note 4)

#### Payment Runs (BACs, Cheque or RFT)
- Opening Bank Accounts

#### Debt Write-off and Claims Abandoned
- See note 6 for definition of credit note vs debt write-off

#### Other Directorates (see Note 4)
- Sign a legal contract

#### Losses and Special Payments
- Authorisation of Payment Runs (BACs, Cheque or RFT)

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<th>Expert Procurement Mgr/ Mgr/ Mgr</th>
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</thead>
<tbody>
<tr>
<td>Approve a business case</td>
<td>Total value of business case over project term AND Subject to review and recommendation by Mgt Board and/or F&amp;I Cttee</td>
<td>≤ £500,000</td>
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