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# Group Governance Manual

## Introduction

### Corporate Governance in Foundation Trusts

Corporate governance is the system by which an organisation is directed and controlled, at its most senior levels, in order to achieve its objectives and meet the necessary standards of accountability and probity.

Wirral University Teaching Hospital (WUTH) and Wirral Community Health and Care (WCHC) are two NHS Foundation Trusts, which means it is a public benefit corporation as constituted under the NHS Act 2006.

In April 2025, both Trusts Boards approved the move to a single organisation for WCHC and WUTH, through an NHS England transaction process, with an aim to deliver by April-June 2027. April 2026 seen the creation of a “Group Board”, a joint forum which will receive delegations from both statutory Boards to carry out the majority of board-related business until the merger is completed.

Foundation Trust Boards have financial and strategic decision making autonomy, with accountability to NHS England and to its membership via a Council of Governors elected from that membership. Effective corporate governance, along with clinical governance, is essential for a Foundation Trust to support that autonomy and accountability, and to achieve its clinical, quality and financial objectives.

Corporate governance is largely about how the Board conducts its business and is separate from day-to-day operational management carried out by the executive directors and senior management team. Fundamental to this is having the means to verify the effectiveness of strategic direction and control achieved through independent review and assurance.

### Corporate Governance Manual

The Corporate Governance Manual is the term used by NHS and other organisations to encompass the key governance documents that, in conjunction with key legislation, form the framework the Trust operates against.

The Health and Social Care Act 2022 enhances and amends the Health and Social Care Act 2012 Act, setting out the legal framework within which the Foundation Trust operates.

The Manual includes the following documents:

- WUTH Constitution
- WCHC Constitution
- Joint Standing Financial Instructions
- WCHC and Group Board Scheme of Reservation and Delegation
- WUTH and Group Board Scheme of Reservation and Delegation
- Standing Orders – Group Board
- Standing Orders – WUTH and WCHC Council of Governors

These documents together provide a regulatory framework for the business conduct of the Foundation Trusts.

It is essential that all employees and members know of the existence of these documents and are aware of their responsibilities included there within. To this end all directors, governors, consultants, senior managers and heads of department have been issued with this manual (e-link) and it is incumbent upon them to ensure that all staff in their charge are advised of its existence.

The Council of Governors and Group Board of Directors shall at all times seek to comply with the Trust's Codes of Conduct for Governors and Directors. There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

# Wirral University Teaching Hospital NHS Foundation Trust

## Constitution

A PUBLIC BENEFIT CORPORATION

**Version control**

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Comments</b>
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**Wirral University Teaching Hospital NHS Foundation Trust  
Constitution**

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## 1 Interpretation and definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006.
- 1.2 References in this Constitution to legislation include all amendments, replacements and re-enactments made and include all subordinate legislation made thereunder.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated, or the context otherwise so requires.
- 1.5 Words importing the singular shall import the plural and vice-versa.
- 1.6 In this Constitution:

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

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

The **2022 Act** is the Health and Care Act 2022.

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

**Annual Members' Meeting** is the annual meeting of the members of the Trust in accordance with paragraph 12 of this Constitution.

**Auditor** means an individual or organisation appointed by the Trust's Council of Governors in accordance with paragraph 23 of Schedule 7 to the 2006 Act to evaluate and verify the accuracy of the financial records and accounting practices of the Trust.

**Board of Directors** is the board of directors of the Trust as constituted in accordance with this Constitution.

The **Chair** means the chair of the Trust.

The **Chief Executive** means the chief officer of the Trust.

The **Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.

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

The **Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.

The **Code of Conduct for Governors** means the Trust's code of conduct for the Governors as adopted by the Trust and the Council of Governors from time to time.

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

**Council of Governors** is the Council of Governors of the Trust as constituted in accordance with this Constitution.

**Days** mean calendar days for the purposes of this Constitution, unless otherwise specified.

**Deputy Chair** means one Non-Executive Director appointed by the Board of Directors to act as the Chair of the Trust in certain circumstances.

**Director** means a voting member of the Board of Directors.

**Financial Year** means each successive period of twelve (12) months beginning with 1 April and ending on 31 March.

**Health Overview and Scrutiny Committee** means a local authority committee in accordance with regulations made further to paragraph 244 of the 2006 Act and includes joint Health Overview and Scrutiny Committees established by more than one local authority further to paragraph 245 of the 2006 Act.

**Healthwatch** means (1) the committee of the Care Quality Commission established under paragraph 6 of Schedule 1 of the Health and Social Care Act 2008 known as Healthwatch England; and (2) any local healthwatch organisation with the functions set out in paragraph 221 of Local Government and Public Involvement in Health Act 2007 relating to service user and public involvement in healthcare.

**Integrated Care Board (ICB)** means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act.

**Meeting of the Board of Directors** means a duly convened meeting of the Board of Directors.

**Model Election Rules** means those election rules as published by NHS Providers from time to time.

**NHS England** is the body corporate known as NHS England, established under section 1H of the 2006 Act.

**Partnership Organisation** means a partnership organisation for the purposes of Schedule 7 paragraph 9(7) of the 2006 Act.

**Public Constituency** means those who live in an area specified in Annex 1 of this Constitution as an area for any public constituency of the Trust as constituted in accordance with paragraph 9 of this Constitution.

**Significant Transaction** is not defined within this Constitution.

**Staff Constituency** means those individuals who are members of Trust staff and as constituted in accordance with paragraph 10 of this Constitution.

**Statutory Transaction** means a merger under section 56 of the 2006 Act, an acquisition under section 56A of the 2006 Act, a separation under section 56B of the 2006 Act, or dissolution under section 57A of the 2006 Act.

The **Terms of Reference** means the terms of reference adopted by any committees or other groups of the Trust and which are set out in the Trust's Corporate Governance Manual and which may be updated from time to time.

the **Trust** means the Wirral University Teaching Hospital NHS Foundation Trust.

**Trust Secretary** means the person appointed by the Board to act as secretary to the Trust, responsible for providing independent governance advice to the Chair, Chief Executive, Board of Directors, and Council of Governors.

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

## **2 Name**

2.1 The name of the foundation trust is the Wirral University Teaching Hospital 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 fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

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 Subject to paragraphs 4.4 (or as otherwise provided by section 45 of the Mental Health Act 2007) and 5, any of these powers may be delegated to a committee of Directors or to an Executive Director.

4.4 The Board of Directors may authorise any three or more persons each of whom is neither an Executive Director of the Trust nor an employee of the Trust to exercise powers conferred on the Trust by Section 45 of the Mental Health Act 2007.

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

- 4.6 Subject to paragraph 4.7 below and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions, the Trust shall have regard to all likely effects of the decision in relation to:
- 4.6.1 the health and wellbeing of the people of England;
  - 4.6.2 the quality of services provided to individuals by relevant bodies, or in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England; and
  - 4.6.3 efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 4.7 The requirement to have regard to the wider effect of its decisions set out at paragraph 4.6 shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- 4.8 In paragraph 4.6 'relevant bodies' has the meaning set out in paragraph 63A(4) of the 2006 Act.
- 4.9 In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out at section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environment Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Trust shall also have regard to guidance published by NHS England.
- 4.10 The Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

## **5 Joint working and delegation arrangements**

- 5.1 Subject to paragraph 5.2 the Trust may arrange in accordance with s65Z5 of the 2006 Act for the joint exercise of functions with any one or more of the following bodies:
- 5.1.1 a relevant body;
  - 5.1.2 a local authority;
  - 5.1.3 a combined authority.
- 5.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with paragraph 5.1, it may make arrangements for:
- 5.2.1 the function to be exercised by a joint committee of theirs
  - 5.2.2 for one or more of them, or a joint committee of them, to establish and maintain a pooled fund.
- 5.3 The Trust must have regard to any guidance published by NHS England under s65Z7.

- 5.4 In this paragraph 5 the following terms have the following meanings:
- 5.4.1 'Relevant body' has the meaning set out in section 65Z5(2) of the 2006 Act
  - 5.4.2 'Local authority' means a local authority within the meaning of section 2B of the 2006 Act
  - 5.4.3 'Combined authority' has the meaning set out in s275 of the 2006 Act
  - 5.4.4 'Pooled fund' has the meaning set out in s65Z6(3) of the 2006 Act.

## **6 Duties relating to Integrated care system financial controls**

- 6.1 The Trust must seek to achieve financial objectives that apply to it under section 223L of the 2006 Act.
- 6.2 The Trust must exercise its functions with a view to ensuring that it complies with its duties under s223M and s223N of the 2006 Act to limit local capital resource use and local revenue resource use.

## **7 Membership and Constituencies**

- 7.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 7.1.1 a Public Constituency;
  - 7.1.2 the Staff Constituency.

## **8 Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust in accordance with this Constitution, with the exception of individuals who are eligible to become members of the Staff Constituency, who shall automatically become members in accordance with paragraph 10.5.

## **9 Public Constituencies**

- 9.1 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.
- 9.2 Those individuals who live in an area specified for a Public Constituency are referred to collectively as a Public Constituency.
- 9.3 The minimum number of members in each Public Constituency is specified in Annex 1.

## **10 Staff Constituency**

- 10.1 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:
- 10.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or

- 10.1.2 they have been continuously employed by the Trust under a contract of employment for at least twelve (12) months; and
- 10.1.3 they have not been disqualified or restricted from membership in accordance with paragraph 11 of this Constitution.
- 10.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 10.3 The Staff Constituency shall be divided into 5 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 10.4 The minimum number of members in each class in the Staff Constituency is specified in Annex 2.
- 10.5 An individual who is:
  - 10.5.1 eligible to become a member of the Staff Constituency; and
  - 10.5.2 invited by the Trust to become a member of the Staff Constituency,shall become a member of the Trust as a member of the appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

## **11 Restriction on membership**

- 11.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 11.2 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.
- 11.3 An individual must be at least sixteen (16) years old to become a member of the Trust.
- 11.4 A member shall otherwise cease to be a member of the Trust in the following circumstances:
  - 11.4.1 they resign by notice to the Trust;
  - 11.4.2 if the Trust reasonably believes that the member no longer lives at their registered address and the Trust does not know where that member lives.
- 11.5 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 4.

## **12 Annual Members' Meeting**

- 12.1 The Trust shall hold an Annual Members' Meeting within nine (9) months of the end of each Financial Year. The Annual Members' Meeting shall be open to members of the public.

12.2 Further provisions about the Annual Members' Meeting are set out in Annex 4.

### **13 Council of Governors – Composition**

13.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.

13.2 The composition of the Council of Governors is specified in Annex 3.

13.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency. The number of Governors to be elected by each constituency is specified in Annex 3.

13.4 No person shall be eligible to be elected or appointed (as the case may be) a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment they have attained the age of sixteen (16) years. Persons who are eligible under this paragraph 13.4 shall be eligible for appointment or election under the provisions of this paragraph 13.

#### **Public Governors**

13.5 Members of the Public Constituency may vote for any eligible member to be a Public Governor, subject to paragraphs 13.6 and 13.7 below.

13.6 A person shall not stand for election to the Council of Governors as a Public Governor unless they have made a declaration in a form specified by the Trust Secretary.

13.7 A Public Governor shall not vote at a meeting of the Council of Governors unless within the previous twelve (12) months they have made, in a form specified by the Trust Secretary, a declaration of eligibility to vote.

13.8 The declarations required under 13.6 and 13.7 above and the equivalent provisions of the declaration required under the Model Election Rules are required by section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under section 60 of the 2006 Act which is false in a material particular.

#### **Staff Governors**

13.9 Members of the Staff Constituency may vote for any eligible member to be a Staff Governor.

#### **Appointed Governors**

13.10 The following local authorities shall be entitled to appoint two (2) Local Authority Governors:

- Wirral Metropolitan Borough Council

13.11 There shall be one (1) Appointed Governor appointed by each Partnership Organisation as set out in Annex 3.

13.12 No defect or deficiency in the appointment or composition of the members of the Council of Governors shall affect the validity of any decision or action taken by them.

## **14 Council of Governors – election of Governors**

- 14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 14.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. A copy of the Model Election Rules as at the date of this Constitution is included at Annex 5 of this Constitution. References in the Model Election Rules to Monitor shall be construed as references to NHS England.
- 14.3 A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of this Constitution (amendment of the Constitution).
- 14.4 An election, if contested, shall be by secret ballot.

## **15 Council of Governors - tenure**

- 15.1 An Elected Governor may hold office for a term of three (3) years’.
- 15.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency by which they were elected, or if they are disqualified for any of the reasons set out in this Constitution. For the avoidance of doubt, this includes a Public Governor moving their principal residence from one Public Constituency to another.
- 15.3 An Elected Governor shall be eligible for re-election at the end of their term for a further three-year term.
- 15.4 An Elected Governor may not hold office for more than nine (9) consecutive years, or three full terms of office.
- 15.5 An Elected Governor completing the maximum term of office of nine (9) years, or nine (9) years within a preceding twelve (12) year period, may not stand to for re-election for a period of three (3) years.
- 15.6 An Appointed Governor may hold office for a period of three (3) years commencing from receipt of their formal nomination by their nominating local authority or Partnership Organisation.
- 15.7 An Appointed Governor shall cease to hold office if the nominating Partnership Organisation withdraws its sponsorship and the Trust has been notified that the sponsorship has been terminated.
- 15.8 An Appointed Governor shall be eligible for re-appointment at the end of their term for a further three-year term.
- 15.9 An Appointed Governor may not hold office for longer than nine (9) consecutive years, or three full terms of office.
- 15.10 An Appointed Governor completing the maximum term of office of nine (9) years, or nine (9) years within a preceding twelve (12) year period, may not stand for re-election to the Council for a period of three (3) years.

15.11 For the purposes of this paragraph 15, concerning the term of office for Governors, a 'year' means a period commencing immediately after the conclusion of their election or appointment.

## **16 Council of Governors – appointment of a Lead Governor**

16.1 The Governors shall nominate one (1) of the Governors to be Lead Governor. The Lead Governor will communicate directly with NHS England in certain circumstances where it would not be appropriate for the Chair to contact NHS England, or for NHS England to contact the Chair.

16.2 The term for the Lead Governor shall be 2 years from the point of nomination. A governor may be re-appointed as the Lead Governor by the council of Governors at the end of that term.

## **17 Council of Governors – disqualification and removal**

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

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

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

17.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it; and/or

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

17.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.

17.3 A Governor may resign from that office at any time during their term by giving notice in writing to the Secretary or the Chair, such notice is to specify the date of resignation.

17.4 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 3.

## **18 Council of Governors – duties of Governors**

18.1 The general duties of the Council of Governors are:

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

18.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

18.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

18.3 All Governors shall comply with the Code of Conduct for Governors.

## **19 Council of Governors – meetings of Governors**

19.1 The Council of Governors shall meet at least four (4) times in each Financial Year at such time and places as the Chair may determine from time to time.

19.2 The Chair of the Trust or, in their absence, the Deputy Chair or another Non-Executive Director, shall preside at meetings of the Council of Governors. For the avoidance of doubt, no meetings of the Council of Governors may proceed in the absence of the Chair or a Non-Executive Director.

19.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing the proper conduct of the meeting.

19.4 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 (1) or more of the Directors to attend a meeting.

## **20 Council of Governors – referral to NHS England**

20.1 A Governor of an NHS Foundation Trust may refer a question to NHS England through the Lead Governor where they are concerned that the Trust has failed or is failing:

20.1.1 to act in accordance with its Constitution; or

20.1.2 to act in accordance with any provision made by or under chapter 5 of the 2006 Act.

20.2 A referral to NHS England will only be made where more than half of the members of the Council of Governors vote to approve the referral.

## **21 Council of Governors - conflicts of interest of Governors**

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

21.2 Further provision for dealing with Governor conflicts of interest shall be set out in the standing orders for the practice and procedure of the Council of Governors contained in the Trust's Corporate Governance Manual.

## **22 Council of Governors – travel expenses**

22.1 Members of the Council of Governors may claim travelling and other expenses at rates determined by the Trust.

## **23 Council of Governors – standing orders**

23.1 The standing orders for the practice and procedure of the Council of Governors and further provisions relating to the Council of Governors are contained in the Trust's Corporate Governance Manual.

## **24 Board of Directors – composition**

24.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors, including the Chair. The Non- Executive Directors will always form the majority of the Board of Directors.

24.2 Subject to the requirements of paragraph 24.1 above, the Board of Directors is to comprise:

24.2.1 a Non-Executive Chair;

24.2.2 not less than four (4) but no more than 7 other Non- Executive Directors; and

24.2.3 not less than four (4) but no more than 7 Executive Directors.

24.3 One (1) of the Executive Directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer.

24.5 One (1) of the Executive Directors shall be the Chief Finance Officer.

24.6 One (1) of the Executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).

24.7 One (1) of the Executive Directors is to be a registered nurse or a registered midwife (within the meaning of the Nurse and Midwifery Order 2001 (SI 2002/253)).

24.8 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

## **25 Board of Directors – general duty**

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

## **26 Board of Directors – qualification for appointment as a Non-Executive Director**

26.1 A person may be appointed as a Non-Executive Director only if:

26.1.1 they are a member of a Public Constituency; or

26.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and

26.1.3 they are not disqualified by virtue of paragraph 29 below.

## **27 Board of Directors – appointment and removal of Chair and other Non-Executive Directors**

27.1 The Council of Governors shall, at a general meeting of the Council of Governors, appoint or remove the Chair of the Trust and the other Non-Executive Directors.

27.2 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

27.3 The Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director, to be the Senior Independent Director, for such a period not exceeding the remainder of their term as a Director.

27.4 Further provisions with respect to the appointment and removal of the Chair, Senior Independent Director and other Non-Executive Directors are set out in the standing orders for the practice and procedure of the Board of Directors contained within the Trust's Corporate Governance Manual.

## **28 Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**

28.1 The Chair and Non-Executive Directors shall appoint or remove the Chief Executive.

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

28.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

## **29 Board of Directors – disqualification**

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

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

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

29.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it;

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

- 29.1.5 a person who is a member of Healthwatch;
  - 29.1.6 a person who is a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 29.1.7 a person who is a member of a local authority's Health Overview and Scrutiny Committee;
  - 29.1.8 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 29.1.9 a person whose tenure of office as a Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 29.1.10 a person who within the preceding five (5) years has been dismissed, otherwise than by reason of redundancy from any paid employment with an NHS body and not reinstated;
  - 29.1.11 a person who is otherwise disqualified by law from acting as a director of an NHS foundation trust;
  - 29.1.12 in the case of a Non-Executive Director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
  - 29.1.13 a person who has had their name removed from a list maintained under the regulations pursuant of Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Services (Wales) Act 2006, and they have not subsequently had their name included in such a list;
  - 29.1.14 a person who is subject to a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);
  - 29.1.15 a person who is incapable by reason of mental disorder, injury or illness of managing and administering their property and affairs;
  - 29.1.16 a person who fails to meet the requirements of the fit and proper person test set out in regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; or
  - 29.1.17 a person who has refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors within one (1) calendar month of appointment confirming acceptance of the Code of Conduct for Directors.
- 29.2 Any person who is disqualified from becoming or continuing as a Director on any of the grounds as set out in this paragraph 29 shall immediately resign as a Director of the Trust or if they decline or fail to do so shall be removed immediately by the Board of Directors and a new Director appointed in their place in accordance with the provisions in this Constitution.

### **30 Board of Directors – meetings**

- 30.1 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 including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing proper conduct of the meeting.
- 30.2 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.

### **31 Board of Directors – Standing orders**

- 31.1 The standing orders for the practice and procedure of the Board of Directors are set out in the Trust's Corporate Governance Manual.

### **32 Board of Directors - conflicts of interest of Directors**

- 32.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 32.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
  - 32.1.2 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.
- 32.2 The duty referred to in paragraph 32.1.1 is not infringed if:
- 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 32.2.2 the matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, "third party" means a person other than:
- 32.4.1 the Trust; or
  - 32.4.2 a person acting on its behalf.
- 32.5 Directors shall disclose to the Board of Directors the nature and extent of any material interests whether direct or indirect (as defined below) held by a Director, their spouse or partner, which shall be recorded in the register of interests of the Directors.
- 32.6 A direct or indirect interest is:
- 32.6.1 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in

- any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust;
- 32.6.2 any interest in an organisation providing health and social care services to the national health service;
- 32.6.3 a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 32.6.4 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 32.7 Any Director who has an interest either direct or indirect in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or their spouse or partner has a direct or indirect interest or otherwise) shall declare the nature and extent of such interest to the Board of Directors and that Director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- 32.8 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.9 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.10 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.
- 32.11 A Director need not declare an interest:
- 32.11.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.11.2 if, or to the extent that, the Directors are already aware of it;
- 32.11.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- (a) by a meeting of the Board of Directors; or
- (b) by a committee of the Directors appointed for the purpose under this Constitution.
- 32.12 However, if paragraph 32.14 applies, a Director who is interested in an actual or proposed matter to be considered by the Board of Directors is to be counted as participating in the decision making process for quorum and voting purposes.
- 32.13 A matter shall have been authorised for the purposes of paragraph 32.13 if:
- 32.13.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;

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

32.13.3 the Director's conflict of interest arises from a permitted cause.

32.13.4 For the purposes of paragraph 32.13.3, the following is a permitted cause:

(a) a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Trust or any of its subsidiaries.

(b) for the purposes of this paragraph, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

32.14 Subject to paragraph 32.15, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.

32.15 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

32.16 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 of arrangement in question.

32.17 Should an interest in a matter for consideration or decision at a board meeting or board committee meeting affect either all the Non-Executive Directors or all the Executive Directors, the Directors present not affected by the interest will form the quorum for that item.

### **33 Board of Directors – remuneration and terms of office**

33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors. In doing so, the Council of Governors shall have regard to NHS England's guidance on remuneration for non-executive directors.

33.2 A committee of the Chair and the Non-Executive Directors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

### **34 Registers**

34.1 The Trust shall have:

34.1.1 a register of members showing, in respect of each member, the constituency to which they belong;

34.1.2 a register of members of the Council of Governors;

34.1.3 a register of interests of Governors;

34.1.4 a register of Directors; and

34.1.5 a register of interests of the Directors.

### **35 Admission to and removal from the registers**

35.1 The Trust Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution, and membership shall only formally commence once that name has been entered into the register.

35.2 The Trust Secretary shall remove from the register of Governors the name of any member who ceases to be a Governor under the provisions of this Constitution.

35.3 The Trust Secretary shall remove from the register of Directors the name of any Director who ceases to be a Director under the provisions of this Constitution.

### **36 Registers – inspection and copies**

36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if they so request.

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

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

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

36.4 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.

### **37 Documents available for public inspection**

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

37.1.1 a copy of the current Constitution;

37.1.2 a copy of the latest annual accounts and of any report of the Auditor on them; and

37.1.3 a copy of the latest annual report.

- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 a copy of any order made under section 65D (appointment of Trust special administrator); 65J (power to extend time); 65KC (action following Secretary of State's rejection of final report); 65L (Trusts coming out of administration); or 65LA (Trusts to be dissolved) of the 2006 Act;
  - 37.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;
  - 37.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;
  - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 37.2.6 a copy of any notice published under section 65F (administrator's draft report); 65G (consultation plan); 65H (consultation requirements); 65J (power to extend time); 65KA (NHS England's decision), 65KB (Secretary of State's response to NHS England'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;
  - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 37.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 37.2.9 a copy of any statement published under section 65J (power to extend time); or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
  - 37.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4 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.

### **38 Auditor**

- 38.1 The Trust shall have an Auditor.
- 38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

38.3 A person may only be appointed as the Auditor if they (or in the case of a firm, each of its members) are eligible to become an Auditor in accordance with paragraph 23 of Schedule 7 to the 2006 Act.

38.4 The Auditor is to carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS England on standards, procedures and techniques to be adopted.

### **39 Audit Committee**

39.1 The Trust shall establish a committee consisting of at least three (3) independent Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

### **40 Accounts**

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

40.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

40.3 The accounts are to be audited by the Trust's Auditor.

40.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.

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

40.6 The Trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to NHS England.

### **41 Annual report, forward plans and non-NHS work**

41.1 The Trust shall prepare an annual report and send it to NHS England.

41.2 Each Annual Report must, in particular, review the extent to which the Trust has exercised its functions:

41.2.1 in accordance with the plans published under:

- (a) section 14Z52 of the 2006 Act;
- (b) section 14Z56 of the 2006 Act

41.2.2 consistently with NHS England's views set out in the latest statement published under section 13SA(1)

41.3 Each Annual Report shall provide:

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

- 41.3.2 information on any occasions in the period to which the report relates on which the Council of Governors has exercised its power under paragraph 19.4
  - 41.3.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 33.2 and such other procedures as the Trust has on pay;
  - 41.3.4 information on the remuneration of the Directors and on the expenses of the governors and the Directors; and
  - 41.3.5 any other information NHS England requires.
- 41.4 The Trust is to comply with any decision NHS England makes as to:
- 41.4.1 the form of the report;
  - 41.4.2 when the report are to be sent to it;
  - 41.4.3 the periods to which the report relates.
- 41.5 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 41.6 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 41.7 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.8 Each forward plan must include information about:
- 41.8.1 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
  - 41.8.2 the income it expects to receive from doing so.
- 41.9 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 41.8.1 the Council of Governors must:
- 41.9.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
  - 41.9.2 notify the Directors of the Trust of its determination.
- 41.10 Where the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

## **42 Presentation of the annual accounts and reports to the Governors and members**

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors and at the Trust's Annual Members Meeting:
- 42.1.1 the Trust's annual accounts;
  - 42.1.2 any report of the Auditor on them; and
  - 42.1.3 the Trust's Annual Report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one (1) member of the Board of Directors in attendance.
- 42.3 The Trust may combine a Meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the Annual Members' Meeting.

## **43 Instruments**

- 43.1 The Trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors. Attestation by any two Directors shall be deemed to constitute affixing the seal under the authority of the Board of Directors or a committee under a delegation.

## **44 Amendment of the Constitution**

- 44.1 The Trust may make amendments of its Constitution only if:
- 44.1.1 more than half of the members of the Board of Directors of the Trust voting approve the amendments; and
  - 44.1.2 more than half of the members of the Council of Governors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 44.1 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.
- 44.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 44.3.1 at least one (1) member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 44.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4 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.

44.5 Amendments to this Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England'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.

#### **45 Mergers etc. and significant transactions**

45.1 The Trust may only apply for a Statutory Transaction with the approval of more than half of the members of the Council of Governors.

45.2 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.

45.3 For the purposes of paragraph 45.2 a Statutory Transaction is not a Significant Transaction.

#### **46 Procedures and practices**

46.1 The Board of Directors shall adopt such procedures and practices (by way of a Corporate Governance Manual or otherwise) as it shall deem to be appropriate for the good governance of the Trust from time to time. For the avoidance of doubt, any such practices and procedures adopted by the Board of Directors for the purposes of good governance shall not form part of this Constitution.

#### **47 Indemnity**

47.1 Members of the Board of Directors, the Council of Governors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

47.2 The Trust may purchase and maintain for members of the Board of Directors, Council of Governors and the Trust Secretary, 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 CONSTITUENCIES**

There shall be 13 Public Constituencies. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Public Constituency:	Minimum number of members:
Bebington and Clatterbridge	50
Bidston and Claughton	50
Birkenhead, Tranmere and Rock Ferry	50
Bromborough and Eastham	50
Greasby, Frankby, Irby, Upton and Woodchurch	50
Heswall, Pensby and Thingwall	50
Leasowe, Moreton and Saughall Massie	50
Liscard and Seacombe	50
Neston, Little Neston, Parkgate, Riverside, Burton, Ness, Willaston and Thornton	50
New Brighton and Wallasey	50
North West and North Wales <sup>1</sup>	50
Oxton and Prenton	50
West Wirral	50
Rest of England	50

<sup>1</sup> This area of the Public Constituency comprises:

- the geographical area covered by the Betsi Cadwaladr University Local Health Board as set out in the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009; and
- any other geographical area covered by the North West Strategic Health Authority, as set out in the Strategic Health Authorities (Establishment and Abolition) (England) Order 2006, which is not already included within any other area of the Public Constituency.

**ANNEX 2**

**THE STAFF CONSTITUENCY**

<b>Class</b>	<b>Minimum number of members:</b>
Registered medical practitioners and registered dentists	50
Registered nurses and registered midwives	50
Other healthcare professional staff	50
Other Trust staff	50

**ANNEX 3**  
**FURTHER PROVISIONS FOR THE COUNCIL OF GOVERNORS**

**1. Composition**

- 1.1. The Council of Governors shall comprise [number] governors as set out in the tables below:

**Public Governors**

<b>Public Constituency</b>	<b>Number of governors</b>
Bebington and Clatterbridge	1
Bidston and Claughton	1
Birkenhead, Tranmere and Rock Ferry	1
Bromborough and Eastham	1
Greasby, Frankby, Irby, Upton and Woodchurch	1
Heswall, Pensby and Thingwall	1
Leasowe, Moreton and Saughall Massie	1
Liscard and Seacombe	1
Neston, Little Neston, Parkgate, Riverside, Burton, Ness, Willaston and Thornton	1
New Brighton and Wallasey	1
North West and North Wales <sup>1</sup>	1
Oxton and Prenton	1
West Wirral	1
Rest of England	1
<b>Total:</b>	<b>14</b>

### Staff Governors

<b>Staff Class</b>	<b>Number of governors</b>
Registered medical practitioners and registered dentists	1
Registered nurses and registered midwives	2
Other healthcare professional staff	1
Other Trust staff	1
<b>Total:</b>	<b>5</b>

### Appointed Governors

<b>Appointing Organisation</b>	<b>Number of governors</b>
Wirral Metropolitan Borough Council	2
University of Liverpool	1
Third Sector Assembly	1
<b>Total:</b>	<b>4</b>

## **2. Disqualification and removal**

- 2.1. The following may not become or continue as a member of the Council of Governors:
- 2.1.1. a person who is a Director of the Trust;
  - 2.1.2. a person who is a director of another Foundation Trust;
  - 2.1.3. a person who has resigned following suspension or been removed as a Governor of this or another Foundation Trust;
  - 2.1.4. a person who has had their name removed from a list maintained under the regulations pursuant of Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Services (Wales) Act 2006, and they have not subsequently had their name included in such a list;
  - 2.1.5. a person who is subject to a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);
  - 2.1.6. a person who is incapable by reason of mental disorder, injury or illness of managing and administering their property and affairs;
  - 2.1.7. a person who has failed to give written consent to the Secretary to enable him to request a third party to provide data that will verify the person's status in relation to paragraphs 2.1.1 to 2.1.6 above;
  - 2.1.8. a person who has refused to take any training required by the Council of Governors for all governors.
  - 2.1.9. a person who ceases to be a member of the constituency or class of constituency by which they were elected
  - 2.1.10. a person who, in the case of an appointed Governor, has been removed by the appointing organisation as a Governor
  - 2.1.11. a person who has refused without reasonable cause to sign the Code of Conduct for Governors

- 2.2. If a governor fails to attend more than 2 consecutive meetings of the Council of Governors in any financial year, their tenure of office is to be terminated immediately unless the other governors are satisfied that:
  - 2.2.1. the absence was due to a reasonable cause; and
  - 2.2.2. they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 2.3. If a governor is considered to have acted in a manner inconsistent with:
  - 2.3.1. the vision and values of the Trust and the core principles of the NHS;
  - 2.3.2. the terms of the Trust's licence; or
  - 2.3.3. the standing orders of the Council of Governors; or
  - 2.3.4. the Governors' Code of Conduct; or
  - 2.3.5. except as a result of a genuine mistake or where reasonable cause can be shown or where they can demonstrate that they have gained no personal benefit, they have failed to declare an interest as required by the Constitution or the standing orders of the Council of Governors, or they have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or the standing orders of the Council of Governors, and this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

they are as judged to have so acted by a majority of not less than 75% of the Council of Governors present and voting then the governor shall vacate their office immediately.
- 2.4. The trust will implement a clear policy and fair process, agreed and adopted by the Council of Governors, for the removal of a Governor from the Council of Governors by a resolution approved by not less than three quarters of the remaining governors present and voting on the grounds that:
  - 2.4.1. they have committed a serious breach of the code of conduct,
  - 2.4.2. they have acted in a manner detrimental to the interests of the trust, or
  - 2.4.3. they have brought the trust into disrepute, and/or
  - 2.4.4. the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.
- 2.5. Where a person is declared disqualified by the Secretary under the provisions of this Constitution, they may appeal the decision to the Chair. This must be submitted in writing within a 6 month period from the disqualification.

2.6. Where a person is removed from the Council of Governors and there is disagreement by that person as to whether the proposal is justified, an independent assessor will be requested to consider the evidence and determine whether the proposed removal is reasonable or otherwise.

2.6.1. The independent assessor will be sought from the Chairpersons and Company Secretaries within the NHS NW Region. Their decision on the matter is final.

### **3. Vacancies**

3.1. Where a vacancy arises on the Council of Governors for any reason other than expiry of the term of office, the following provisions will apply:

3.2. Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

3.3. When a vacancy arises for one or more Elected Governors, the Council of Governors shall have the option to take from the list of members who stood for election at the most recent election of Governors from the class or constituency in question the next highest polling candidate. This procedure, which shall be an uncontested election for the purposes of the Model Election Rules as they apply to the Trust and shall be available to the Governors on two occasions within twelve months of the previous election. Governors appointed in this way shall hold office for a minimum of six months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of Governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of the Governor whose cessation of office gave rise to the vacancy.

**ANNEX 4**  
**FURTHER PROVISIONS FOR MEMBERS**

**4. Annual Members' Meeting**

- 4.1. The Foundation Trust is to hold a members' meeting (called the Annual Members' Meeting) within nine months of the end of the financial year. This meeting is to be held in public.
- 4.2. All members' meetings other than annual meetings are called special members' meetings.
- 4.3. Notice of the meeting will be given at least 14 clear days before the date of the meeting.
- 4.4. The Chair of the Trust or, in their absence, the Deputy Chair or another Non-Executive Director, shall preside at the Annual Members' Meeting. For the avoidance of doubt, no Annual Members' Meeting may proceed in the absence of the Chair or a Non-Executive Director.
- 4.5. Before a members' meeting can do business there must be a quorum present. Except where this Constitution states otherwise, a quorum is ten members.
- 4.6. If a quorum is not present, no matter may be discussed or voted upon at that meeting and the meeting shall be adjourned. Such a position shall be recorded in the minutes of the meeting.
- 4.7. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board of Directors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present shall be a quorum.

**5. Restriction on membership**

- 5.1. An individual shall not become or continue as a member if:
  - 5.1.1. They are or wish to become a member of a Public Constituency and they do not or no longer resides within the relevant catchment area as set out in Annex 1;
  - 5.1.2. in the last five years prior to the individual's application for membership, the individual has been involved, as a perpetrator, in a serious incident of assault or violence, or in one or more incidents of harassment against any persons working for the Trust or any other NHS Body or any service users or carers or visitors to the Trust or any other NHS Body;
  - 5.1.3. in the last 5 years the individual has been excluded from any of the Trust's premises from which services are provided;
  - 5.1.4. the individual is a vexatious complainant as determined by the Secretary; or

- 5.1.5. the Council of Governors resolves that there are reasonable grounds to believe that the individual is likely to:
  - 5.1.5.1 prejudice the ability of the Trust to fulfil its Principal Purpose or other of its purposes under the Constitution or otherwise to discharge its duties and functions; or
  - 5.1.5.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
  - 5.1.5.3 adversely affect public confidence in the goods or services provided by the Trust; or
  - 5.1.5.4 otherwise bring the Trust into disrepute
- 5.1.6. the individual is a former employee of the Trust and their contract has been terminated due to poor performance or misconduct.
- 5.2. No person who has been expelled from membership of the Trust is to be re-admitted as a member except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors.
- 5.3. The Council of Governors will adopt a process for the removal of members as well as the adjudication of any disputes arising with members.

**ANNEX 5**  
**MODEL ELECTION RULES**

# Wirral Community Health and Care NHS Foundation Trust

## Constitution

A PUBLIC BENEFIT CORPORATION

### Version control

Version	Date	Author	Comments
001	July 2025	Browne Jacobson	

**Wirral Community Health and Care NHS Foundation Trust  
Constitution**

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## **1 Interpretation and definitions**

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006.
- 1.2 References in this Constitution to legislation include all amendments, replacements and re-enactments made and include all subordinate legislation made thereunder.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated, or the context otherwise so requires.
- 1.5 Words importing the singular shall import the plural and vice-versa.
- 1.6 In this Constitution:

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

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

The **2022 Act** is the Health and Care Act 2022.

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

**Annual Members' Meeting** is the annual meeting of the members of the Trust in accordance with paragraph 12 of this Constitution.

**Auditor** means an individual or organisation appointed by the Trust's Council of Governors in accordance with paragraph 23 of Schedule 7 to the 2006 Act to evaluate and verify the accuracy of the financial records and accounting practices of the Trust.

**Board of Directors** is the board of directors of the Trust as constituted in accordance with this Constitution.

The **Chair** means the chair of the Trust.

The **Chief Executive** means the chief officer of the Trust.

The **Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.

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

The **Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.

The **Code of Conduct for Governors** means the Trust's code of conduct for the Governors as adopted by the Trust and the Council of Governors from time to time.

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

**Council of Governors** is the Council of Governors of the Trust as constituted in accordance with this Constitution.

**Days** mean calendar days for the purposes of this Constitution, unless otherwise specified.

**Deputy Chair** means one Non-Executive Director appointed by the Board of Directors to act as the Chair of the Trust in certain circumstances.

**Director** means a voting member of the Board of Directors.

**Financial Year** means each successive period of twelve (12) months beginning with 1 April and ending on 31 March.

**Health Overview and Scrutiny Committee** means a local authority committee in accordance with regulations made further to paragraph 244 of the 2006 Act and includes joint Health Overview and Scrutiny Committees established by more than one local authority further to paragraph 245 of the 2006 Act.

**Healthwatch** means (1) the committee of the Care Quality Commission established under paragraph 6 of Schedule 1 of the Health and Social Care Act 2008 known as Healthwatch England; and (2) any local healthwatch organisation with the functions set out in paragraph 221 of Local Government and Public Involvement in Health Act 2007 relating to service user and public involvement in healthcare.

**Integrated Care Board (ICB)** means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act.

**Meeting of the Board of Directors** means a duly convened meeting of the Board of Directors.

**Model Election Rules** means those election rules as published by NHS Providers from time to time.

**NHS England** is the body corporate known as NHS England, established under section 1H of the 2006 Act.

**Partnership Organisation** means a partnership organisation for the purposes of Schedule 7 paragraph 9(7) of the 2006 Act.

**Public Constituency** means those who live in an area specified in Annex 1 of this Constitution as an area for any public constituency of the Trust as constituted in accordance with paragraph 9 of this Constitution.

**Significant Transaction** is not defined within this Constitution.

**Staff Constituency** means those individuals who are members of Trust staff and as constituted in accordance with paragraph 10 of this Constitution.

**Statutory Transaction** means a merger under section 56 of the 2006 Act, an acquisition under section 56A of the 2006 Act, a separation under section 56B of the 2006 Act, or dissolution under section 57A of the 2006 Act.

The **Terms of Reference** means the terms of reference adopted by any committees or other groups of the Trust and which are set out in the Trust's Corporate Governance Manual and which may be updated from time to time.

the **Trust** means the Wirral Community Health and Care NHS Foundation Trust.

**Trust Secretary** means the person appointed by the Board to act as secretary to the Trust, responsible for providing independent governance advice to the Chair, Chief Executive, Board of Directors, and Council of Governors.

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

## **2 Name**

2.1 The name of the foundation trust is the Wirral Community Health and Care 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 fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

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 Subject to paragraphs 4.4 (or as otherwise provided by section 45 of the Mental Health Act 2007) and 5, any of these powers may be delegated to a committee of Directors or to an Executive Director.

4.4 The Board of Directors may authorise any three or more persons each of whom is neither an Executive Director of the Trust nor an employee of the Trust to exercise powers conferred on the Trust by Section 45 of the Mental Health Act 2007.

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

- 4.6 Subject to paragraph 4.7 below and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions, the Trust shall have regard to all likely effects of the decision in relation to:
- 4.6.1 the health and wellbeing of the people of England;
  - 4.6.2 the quality of services provided to individuals by relevant bodies, or in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England; and
  - 4.6.3 efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 4.7 The requirement to have regard to the wider effect of its decisions set out at paragraph 4.6 shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- 4.8 In paragraph 4.6 'relevant bodies' has the meaning set out in paragraph 63A(4) of the 2006 Act.
- 4.9 In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out at section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environment Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Trust shall also have regard to guidance published by NHS England.
- 4.10 The Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

## **5 Joint working and delegation arrangements**

- 5.1 Subject to paragraph 5.2 the Trust may arrange in accordance with s65Z5 of the 2006 Act for the joint exercise of functions with any one or more of the following bodies:
- 5.1.1 a relevant body;
  - 5.1.2 a local authority;
  - 5.1.3 a combined authority.
- 5.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with paragraph 5.1, it may make arrangements for:
- 5.2.1 the function to be exercised by a joint committee of theirs
  - 5.2.2 for one or more of them, or a joint committee of them, to establish and maintain a pooled fund.
- 5.3 The Trust must have regard to any guidance published by NHS England under s65Z7.

- 5.4 In this paragraph 5 the following terms have the following meanings:
- 5.4.1 'Relevant body' has the meaning set out in section 65Z5(2) of the 2006 Act
  - 5.4.2 'Local authority' means a local authority within the meaning of section 2B of the 2006 Act
  - 5.4.3 'Combined authority' has the meaning set out in s275 of the 2006 Act
  - 5.4.4 'Pooled fund' has the meaning set out in s65Z6(3) of the 2006 Act.

## **6 Duties relating to Integrated care system financial controls**

- 6.1 The Trust must seek to achieve financial objectives that apply to it under section 223L of the 2006 Act.
- 6.2 The Trust must exercise its functions with a view to ensuring that it complies with its duties under s223M and s223N of the 2006 Act to limit local capital resource use and local revenue resource use.

## **7 Membership and Constituencies**

- 7.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 7.1.1 a Public Constituency;
  - 7.1.2 the Staff Constituency.

## **8 Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust in accordance with this Constitution, with the exception of individuals who are eligible to become members of the Staff Constituency, who shall automatically become members in accordance with paragraph 10.5.

## **9 Public Constituencies**

- 9.1 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.
- 9.2 Those individuals who live in an area specified for a Public Constituency are referred to collectively as a Public Constituency.
- 9.3 The minimum number of members in each Public Constituency is specified in Annex 1.

## **10 Staff Constituency**

- 10.1 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:
- 10.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or

- 10.1.2 they have been continuously employed by the Trust under a contract of employment for at least twelve (12) months; and
- 10.1.3 they have not been disqualified or restricted from membership in accordance with paragraph 11 of this Constitution.
- 10.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 10.3 The Staff Constituency shall be divided into 5 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 10.4 The minimum number of members in each class in the Staff Constituency is specified in Annex 2.
- 10.5 An individual who is:
  - 10.5.1 eligible to become a member of the Staff Constituency; and
  - 10.5.2 invited by the Trust to become a member of the Staff Constituency,shall become a member of the Trust as a member of the appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

## **11 Restriction on membership**

- 11.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 11.2 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.
- 11.3 An individual must be at least sixteen (16) years old to become a member of the Trust.
- 11.4 A member shall otherwise cease to be a member of the Trust in the following circumstances:
  - 11.4.1 they resign by notice to the Trust;
  - 11.4.2 if the Trust reasonably believes that the member no longer lives at their registered address and the Trust does not know where that member lives.
- 11.5 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 4.

## **12 Annual Members' Meeting**

- 12.1 The Trust shall hold an Annual Members' Meeting within nine (9) months of the end of each Financial Year. The Annual Members' Meeting shall be open to members of the public.

12.2 Further provisions about the Annual Members' Meeting are set out in Annex 4.

### **13 Council of Governors – Composition**

13.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.

13.2 The composition of the Council of Governors is specified in Annex 3.

13.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency. The number of Governors to be elected by each constituency is specified in Annex 3.

13.4 No person shall be eligible to be elected or appointed (as the case may be) a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment they have attained the age of sixteen (16) years. Persons who are eligible under this paragraph 13.4 shall be eligible for appointment or election under the provisions of this paragraph 13.

#### **Public Governors**

13.5 Members of the Public Constituency may vote for any eligible member to be a Public Governor, subject to paragraphs 13.6 and 13.7 below.

13.6 A person shall not stand for election to the Council of Governors as a Public Governor unless they have made a declaration in a form specified by the Trust Secretary.

13.7 A Public Governor shall not vote at a meeting of the Council of Governors unless within the previous twelve (12) months they have made, in a form specified by the Trust Secretary, a declaration of eligibility to vote.

13.8 The declarations required under 13.6 and 13.7 above and the equivalent provisions of the declaration required under the Model Election Rules are required by section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under section 60 of the 2006 Act which is false in a material particular.

#### **Staff Governors**

13.9 Members of the Staff Constituency may vote for any eligible member to be a Staff Governor.

#### **Appointed Governors**

13.10 The following local authorities shall be entitled to appoint one (1) Local Authority Governors:

- Wirral Metropolitan Borough Council

13.11 There shall be one (1) Appointed Governor appointed by each Partnership Organisation as set out in Annex 3.

13.12 No defect or deficiency in the appointment or composition of the members of the Council of Governors shall affect the validity of any decision or action taken by them.

## **14 Council of Governors – election of Governors**

- 14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 14.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. A copy of the Model Election Rules as at the date of this Constitution is included at Annex 5 of this Constitution. References in the Model Election Rules to Monitor shall be construed as references to NHS England.
- 14.3 A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of this Constitution (amendment of the Constitution).
- 14.4 An election, if contested, shall be by secret ballot.

## **15 Council of Governors - tenure**

- 15.1 An Elected Governor may hold office for a term of three (3) years’.
- 15.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency by which they were elected, or if they are disqualified for any of the reasons set out in this Constitution. For the avoidance of doubt, this includes a Public Governor moving their principal residence from one Public Constituency to another.
- 15.3 An Elected Governor shall be eligible for re-election at the end of their term for a further three-year term.
- 15.4 An Elected Governor may not hold office for more than nine (9) consecutive years, or three full terms of office.
- 15.5 An Elected Governor completing the maximum term of office of nine (9) years, or nine (9) years within a preceding twelve (12) year period, may not stand to for re-election for a period of three (3) years.
- 15.6 An Appointed Governor may hold office for a period of three (3) years commencing from receipt of their formal nomination by their nominating local authority or Partnership Organisation.
- 15.7 An Appointed Governor shall cease to hold office if the nominating Partnership Organisation withdraws its sponsorship and the Trust has been notified that the sponsorship has been terminated.
- 15.8 An Appointed Governor shall be eligible for re-appointment at the end of their term for a further three-year term.
- 15.9 An Appointed Governor may not hold office for longer than nine (9) consecutive years, or three full terms of office.
- 15.10 An Appointed Governor completing the maximum term of office of nine (9) years, or nine (9) years within a preceding twelve (12) year period, may not stand for re-election to the Council for a period of three (3) years.

15.11 For the purposes of this paragraph 15, concerning the term of office for Governors, a 'year' means a period commencing immediately after the conclusion of their election or appointment.

## **16 Council of Governors – appointment of a Lead Governor**

16.1 The Governors shall nominate one (1) of the Governors to be Lead Governor. The Lead Governor will communicate directly with NHS England in certain circumstances where it would not be appropriate for the Chair to contact NHS England, or for NHS England to contact the Chair.

16.2 The term for the Lead Governor shall be 2 years from the point of nomination. A governor may be re-appointed as the Lead Governor by the Council of Governors at the end of that term.

## **17 Council of Governors – disqualification and removal**

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

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

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

17.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it; and/or

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

17.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.

17.3 A Governor may resign from that office at any time during their term by giving notice in writing to the Secretary or the Chair, such notice is to specify the date of resignation.

17.4 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 3.

## **18 Council of Governors – duties of Governors**

18.1 The general duties of the Council of Governors are:

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

18.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

18.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

18.3 All Governors shall comply with the Code of Conduct for Governors.

## **19 Council of Governors – meetings of Governors**

19.1 The Council of Governors shall meet at least four (4) times in each Financial Year at such time and places as the Chair may determine from time to time.

19.2 The Chair of the Trust or, in their absence, the Deputy Chair or another Non-Executive Director, shall preside at meetings of the Council of Governors. For the avoidance of doubt, no meetings of the Council of Governors may proceed in the absence of the Chair or a Non-Executive Director.

19.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing the proper conduct of the meeting.

19.4 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 (1) or more of the Directors to attend a meeting.

## **20 Council of Governors – referral to NHS England**

20.1 A Governor of an NHS Foundation Trust may refer a question to NHS England through the Lead Governor where they are concerned that the Trust has failed or is failing:

20.1.1 to act in accordance with its Constitution; or

20.1.2 to act in accordance with any provision made by or under chapter 5 of the 2006 Act.

20.2 A referral to NHS England will only be made where more than half of the members of the Council of Governors vote to approve the referral.

## **21 Council of Governors - conflicts of interest of Governors**

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

21.2 Further provision for dealing with Governor conflicts of interest shall be set out in the standing orders for the practice and procedure of the Council of Governors contained in the Trust's Corporate Governance Manual.

## **22 Council of Governors – travel expenses**

22.1 Members of the Council of Governors may claim travelling and other expenses at rates determined by the Trust.

## **23 Council of Governors – standing orders**

23.1 The standing orders for the practice and procedure of the Council of Governors and further provisions relating to the Council of Governors are contained in the Trust's Corporate Governance Manual.

## **24 Board of Directors – composition**

24.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors, including the Chair. The Non- Executive Directors will always form the majority of the Board of Directors.

24.2 Subject to the requirements of paragraph 24.1 above, the Board of Directors is to comprise:

24.2.1 a Non-Executive Chair;

24.2.2 not less than four (4) but no more than 7 other Non- Executive Directors; and

24.2.3 not less than four (4) but no more than 7 Executive Directors.

24.3 One (1) of the Executive Directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer.

24.5 One (1) of the Executive Directors shall be the Chief Finance Officer.

24.6 One (1) of the Executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).

24.7 One (1) of the Executive Directors is to be a registered nurse or a registered midwife (within the meaning of the Nurse and Midwifery Order 2001 (SI 2002/253)).

24.8 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

## **25 Board of Directors – general duty**

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

## **26 Board of Directors – qualification for appointment as a Non-Executive Director**

26.1 A person may be appointed as a Non-Executive Director only if:

26.1.1 they are a member of a Public Constituency; or

26.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and

26.1.3 they are not disqualified by virtue of paragraph 29 below.

## **27 Board of Directors – appointment and removal of Chair and other Non-Executive Directors**

27.1 The Council of Governors shall, at a general meeting of the Council of Governors, appoint or remove the Chair of the Trust and the other Non-Executive Directors.

27.2 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

27.3 The Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director, to be the Senior Independent Director, for such a period not exceeding the remainder of their term as a Director.

27.4 Further provisions with respect to the appointment and removal of the Chair, Senior Independent Director and other Non-Executive Directors are set out in the standing orders for the practice and procedure of the Board of Directors contained within the Trust's Corporate Governance Manual.

## **28 Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**

28.1 The Chair and Non-Executive Directors shall appoint or remove the Chief Executive.

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

28.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

## **29 Board of Directors – disqualification**

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

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

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

29.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it;

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

- 29.1.5 a person who is a member of Healthwatch;
  - 29.1.6 a person who is a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 29.1.7 a person who is a member of a local authority's Health Overview and Scrutiny Committee;
  - 29.1.8 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 29.1.9 a person whose tenure of office as a Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 29.1.10 a person who within the preceding five (5) years has been dismissed, otherwise than by reason of redundancy from any paid employment with an NHS body and not reinstated;
  - 29.1.11 a person who is otherwise disqualified by law from acting as a director of an NHS foundation trust;
  - 29.1.12 in the case of a Non-Executive Director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
  - 29.1.13 a person who has had their name removed from a list maintained under the regulations pursuant of Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Services (Wales) Act 2006, and they have not subsequently had their name included in such a list;
  - 29.1.14 a person who is subject to a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);
  - 29.1.15 a person who is incapable by reason of mental disorder, injury or illness of managing and administering their property and affairs;
  - 29.1.16 a person who fails to meet the requirements of the fit and proper person test set out in regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; or
  - 29.1.17 a person who has refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors within one (1) calendar month of appointment confirming acceptance of the Code of Conduct for Directors.
- 29.2 Any person who is disqualified from becoming or continuing as a Director on any of the grounds as set out in this paragraph 29 shall immediately resign as a Director of the Trust or if they decline or fail to do so shall be removed immediately by the Board of Directors and a new Director appointed in their place in accordance with the provisions in this Constitution.

### **30 Board of Directors – meetings**

- 30.1 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 including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing proper conduct of the meeting.
- 30.2 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.

### **31 Board of Directors – Standing orders**

- 31.1 The standing orders for the practice and procedure of the Board of Directors are set out in the Trust's Corporate Governance Manual.

### **32 Board of Directors - conflicts of interest of Directors**

- 32.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 32.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
  - 32.1.2 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.
- 32.2 The duty referred to in paragraph 32.1.1 is not infringed if:
- 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 32.2.2 the matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, "third party" means a person other than:
- 32.4.1 the Trust; or
  - 32.4.2 a person acting on its behalf.
- 32.5 Directors shall disclose to the Board of Directors the nature and extent of any material interests whether direct or indirect (as defined below) held by a Director, their spouse or partner, which shall be recorded in the register of interests of the Directors.
- 32.6 A direct or indirect interest is:
- 32.6.1 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in

- any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust;
- 32.6.2 any interest in an organisation providing health and social care services to the national health service;
- 32.6.3 a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 32.6.4 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 32.7 Any Director who has an interest either direct or indirect in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or their spouse or partner has a direct or indirect interest or otherwise) shall declare the nature and extent of such interest to the Board of Directors and that Director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- 32.8 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.9 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.10 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.
- 32.11 A Director need not declare an interest:
- 32.11.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.11.2 if, or to the extent that, the Directors are already aware of it;
- 32.11.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- (a) by a meeting of the Board of Directors; or
- (b) by a committee of the Directors appointed for the purpose under this Constitution.
- 32.12 However, if paragraph 32.14 applies, a Director who is interested in an actual or proposed matter to be considered by the Board of Directors is to be counted as participating in the decision making process for quorum and voting purposes.
- 32.13 A matter shall have been authorised for the purposes of paragraph 32.13 if:
- 32.13.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;

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

32.13.3 the Director's conflict of interest arises from a permitted cause.

32.13.4 For the purposes of paragraph 32.13.3, the following is a permitted cause:

(a) a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Trust or any of its subsidiaries.

(b) for the purposes of this paragraph, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

32.14 Subject to paragraph 32.15, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.

32.15 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

32.16 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 of arrangement in question.

32.17 Should an interest in a matter for consideration or decision at a board meeting or board committee meeting affect either all the Non-Executive Directors or all the Executive Directors, the Directors present not affected by the interest will form the quorum for that item.

### **33 Board of Directors – remuneration and terms of office**

33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors. In doing so, the Council of Governors shall have regard to NHS England's guidance on remuneration for non-executive directors.

33.2 A committee of the Chair and the Non-Executive Directors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

### **34 Registers**

34.1 The Trust shall have:

34.1.1 a register of members showing, in respect of each member, the constituency to which they belong;

34.1.2 a register of members of the Council of Governors;

34.1.3 a register of interests of Governors;

34.1.4 a register of Directors; and

34.1.5 a register of interests of the Directors.

### **35 Admission to and removal from the registers**

35.1 The Trust Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution, and membership shall only formally commence once that name has been entered into the register.

35.2 The Trust Secretary shall remove from the register of Governors the name of any member who ceases to be a Governor under the provisions of this Constitution.

35.3 The Trust Secretary shall remove from the register of Directors the name of any Director who ceases to be a Director under the provisions of this Constitution.

### **36 Registers – inspection and copies**

36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if they so request.

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

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

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

36.4 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.

### **37 Documents available for public inspection**

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

37.1.1 a copy of the current Constitution;

37.1.2 a copy of the latest annual accounts and of any report of the Auditor on them; and

37.1.3 a copy of the latest annual report.

- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 a copy of any order made under section 65D (appointment of Trust special administrator); 65J (power to extend time); 65KC (action following Secretary of State's rejection of final report); 65L (Trusts coming out of administration); or 65LA (Trusts to be dissolved) of the 2006 Act;
  - 37.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;
  - 37.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;
  - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 37.2.6 a copy of any notice published under section 65F (administrator's draft report); 65G (consultation plan); 65H (consultation requirements); 65J (power to extend time); 65KA (NHS England's decision), 65KB (Secretary of State's response to NHS England'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;
  - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 37.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 37.2.9 a copy of any statement published under section 65J (power to extend time); or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
  - 37.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4 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.

### **38 Auditor**

- 38.1 The Trust shall have an Auditor.
- 38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

38.3 A person may only be appointed as the Auditor if they (or in the case of a firm, each of its members) are eligible to become an Auditor in accordance with paragraph 23 of Schedule 7 to the 2006 Act.

38.4 The Auditor is to carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS England on standards, procedures and techniques to be adopted.

### **39 Audit Committee**

39.1 The Trust shall establish a committee consisting of at least three (3) independent Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

### **40 Accounts**

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

40.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

40.3 The accounts are to be audited by the Trust's Auditor.

40.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.

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

40.6 The Trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to NHS England.

### **41 Annual report, forward plans and non-NHS work**

41.1 The Trust shall prepare an annual report and send it to NHS England.

41.2 Each Annual Report must, in particular, review the extent to which the Trust has exercised its functions:

41.2.1 in accordance with the plans published under:

(a) section 14Z52 of the 2006 Act;

(b) section 14Z56 of the 2006 Act

41.2.2 consistently with NHS England's views set out in the latest statement published under section 13SA(1)

41.3 Each Annual Report shall provide:

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

- 41.3.2 information on any occasions in the period to which the report relates on which the Council of Governors has exercised its power under paragraph 19.4
  - 41.3.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 33.2 and such other procedures as the Trust has on pay;
  - 41.3.4 information on the remuneration of the Directors and on the expenses of the governors and the Directors; and
  - 41.3.5 any other information NHS England requires.
- 41.4 The Trust is to comply with any decision NHS England makes as to:
- 41.4.1 the form of the report;
  - 41.4.2 when the report are to be sent to it;
  - 41.4.3 the periods to which the report relates.
- 41.5 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 41.6 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 41.7 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.8 Each forward plan must include information about:
- 41.8.1 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
  - 41.8.2 the income it expects to receive from doing so.
- 41.9 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 41.8.1 the Council of Governors must:
- 41.9.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
  - 41.9.2 notify the Directors of the Trust of its determination.
- 41.10 Where the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

## **42 Presentation of the annual accounts and reports to the Governors and members**

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors and at the Trust's Annual Members Meeting:
- 42.1.1 the Trust's annual accounts;
  - 42.1.2 any report of the Auditor on them; and
  - 42.1.3 the Trust's Annual Report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one (1) member of the Board of Directors in attendance.
- 42.3 The Trust may combine a Meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the Annual Members' Meeting.

## **43 Instruments**

- 43.1 The Trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors. Attestation by any two Directors shall be deemed to constitute affixing the seal under the authority of the Board of Directors or a committee under a delegation.

## **44 Amendment of the Constitution**

- 44.1 The Trust may make amendments of its Constitution only if:
- 44.1.1 more than half of the members of the Board of Directors of the Trust voting approve the amendments; and
  - 44.1.2 more than half of the members of the Council of Governors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 44.1 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.
- 44.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 44.3.1 at least one (1) member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 44.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4 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.

44.5 Amendments to this Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England'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.

#### **45 Mergers etc. and significant transactions**

45.1 The Trust may only apply for a Statutory Transaction with the approval of more than half of the members of the Council of Governors.

45.2 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.

45.3 For the purposes of paragraph 45.2 a Statutory Transaction is not a Significant Transaction.

#### **46 Procedures and practices**

46.1 The Board of Directors shall adopt such procedures and practices (by way of a Corporate Governance Manual or otherwise) as it shall deem to be appropriate for the good governance of the Trust from time to time. For the avoidance of doubt, any such practices and procedures adopted by the Board of Directors for the purposes of good governance shall not form part of this Constitution.

#### **47 Indemnity**

47.1 Members of the Board of Directors, the Council of Governors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

47.2 The Trust may purchase and maintain for members of the Board of Directors, Council of Governors and the Trust Secretary, 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 CONSTITUENCIES**

There shall be 5 Public Constituencies. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Public Constituency:	Electoral area:	Minimum number of members:
Birkenhead		50
Wallasey		50
Wirral West		50
Wirral South and Neston		50
Rest of England	All electoral areas in England other than those listed as falling within the Public Constituencies set out above	50

**ANNEX 2**

**THE STAFF CONSTITUENCY**

<b>Class</b>	<b>Description:</b>	<b>Minimum number of members:</b>
Staff Constituency	All staff will be members of a single Staff constituency	50
<b>Total</b>		

**ANNEX 3**  
**FURTHER PROVISIONS FOR THE COUNCIL OF GOVERNORS**

**1. Composition**

- 1.1. The Council of Governors shall comprise governors as set out in the tables below:

**Public Governors**

<b>Public Constituency</b>	<b>Number of governors</b>
Birkenhead	2
Wallasey	2
Wirral West	2
Wirral South and Neston	2
Rest of England	3
<b>Total:</b>	<b>11</b>

**Staff Governors**

<b>Staff Class</b>	<b>Number of governors</b>
Staff Constituency	3
<b>Total:</b>	<b>3</b>

**Appointed Governors**

<b>Appointing Organisation</b>	<b>Number of governors</b>
Healthwatch	1
University of Chester	1
Wirral Metropolitan Borough Council	1
<b>Total:</b>	<b>3</b>

## **2. Disqualification and removal**

- 2.1. The following may not become or continue as a member of the Council of Governors:
- 2.1.1. a person who is a Director of the Trust;
  - 2.1.2. a person who is a director of another Foundation Trust;
  - 2.1.3. a person who has resigned following suspension or been removed as a Governor of this or another Foundation Trust;
  - 2.1.4. a person who has had their name removed from a list maintained under the regulations pursuant of Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Services (Wales) Act 2006, and they have not subsequently had their name included in such a list;
  - 2.1.5. a person who is subject to a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);
  - 2.1.6. a person who is incapable by reason of mental disorder, injury or illness of managing and administering their property and affairs;
  - 2.1.7. a person who has failed to give written consent to the Secretary to enable him to request a third party to provide data that will verify the person's status in relation to paragraphs 2.1.1 to 2.1.6 above;
  - 2.1.8. a person who has refused to take any training required by the Council of Governors for all governors.
  - 2.1.9. a person who ceases to be a member of the constituency or class of constituency by which they were elected
  - 2.1.10. a person who, in the case of an appointed Governor, has been removed by the appointing organisation as a Governor
  - 2.1.11. a person who has refused without reasonable cause to sign the Code of Conduct for Governors

- 2.2. If a governor fails to attend more than 2 consecutive meetings of the Council of Governors in any financial year, their tenure of office is to be terminated immediately unless the other governors are satisfied that:
  - 2.2.1. the absence was due to a reasonable cause; and
  - 2.2.2. they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 2.3. If a governor is considered to have acted in a manner inconsistent with:
  - 2.3.1. the vision and values of the Trust and the core principles of the NHS;
  - 2.3.2. the terms of the Trust's licence; or
  - 2.3.3. the standing orders of the Council of Governors; or
  - 2.3.4. the Governors' Code of Conduct; or
  - 2.3.5. except as a result of a genuine mistake or where reasonable cause can be shown or where they can demonstrate that they have gained no personal benefit, they have failed to declare an interest as required by the Constitution or the standing orders of the Council of Governors, or they have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or the standing orders of the Council of Governors, and this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

they are as judged to have so acted by a majority of not less than 75% of the Council of Governors present and voting then the governor shall vacate their office immediately.
- 2.4. The trust will implement a clear policy and fair process, agreed and adopted by the Council of Governors, for the removal of a Governor from the Council of Governors by a resolution approved by not less than three quarters of the remaining governors present and voting on the grounds that:
  - 2.4.1. they have committed a serious breach of the code of conduct,
  - 2.4.2. they have acted in a manner detrimental to the interests of the trust, or
  - 2.4.3. they have brought the trust into disrepute, and/or
  - 2.4.4. the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.
- 2.5. Where a person is declared disqualified by the Secretary under the provisions of this Constitution, they may appeal the decision to the Chair. This must be submitted in writing within a 6 month period from the disqualification.

2.6. Where a person is removed from the Council of Governors and there is disagreement by that person as to whether the proposal is justified, an independent assessor will be requested to consider the evidence and determine whether the proposed removal is reasonable or otherwise.

2.6.1. The independent assessor will be sought from the Chairpersons and Company Secretaries within the NHS NW Region. Their decision on the matter is final.

### **3. Vacancies**

3.1. Where a vacancy arises on the Council of Governors for any reason other than expiry of the term of office, the following provisions will apply:

3.2. Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

3.3. When a vacancy arises for one or more Elected Governors, the Council of Governors shall have the option to take from the list of members who stood for election at the most recent election of Governors from the class or constituency in question the next highest polling candidate. This procedure, which shall be an uncontested election for the purposes of the Model Election Rules as they apply to the Trust and shall be available to the Governors on two occasions within twelve months of the previous election. Governors appointed in this way shall hold office for a minimum of six months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of Governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of the Governor whose cessation of office gave rise to the vacancy.

**ANNEX 4**  
**FURTHER PROVISIONS FOR MEMBERS**

**4. Annual Members' Meeting**

- 4.1. The Foundation Trust is to hold a members' meeting (called the Annual Members' Meeting) within nine months of the end of the financial year. This meeting is to be held in public.
- 4.2. All members' meetings other than annual meetings are called special members' meetings.
- 4.3. Notice of the meeting will be given at least 14 clear days before the date of the meeting.
- 4.4. The Chair of the Trust or, in their absence, the Deputy Chair or another Non-Executive Director, shall preside at the Annual Members' Meeting. For the avoidance of doubt, no Annual Members' Meeting may proceed in the absence of the Chair or a Non-Executive Director.
- 4.5. Before a members' meeting can do business there must be a quorum present. Except where this Constitution states otherwise a quorum is ten.
- 4.6. If a quorum is not present, no matter may be discussed or voted upon at that meeting and the meeting shall be adjourned. Such a position shall be recorded in the minutes of the meeting.
- 4.7. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board of Directors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present shall be a quorum.

**5. Restriction on membership**

- 5.1. An individual shall not become or continue as a member if:
  - 5.1.1. They are or wish to become a member of a Public Constituency and they do not or no longer resides within the relevant catchment area as set out in Annex 1;
  - 5.1.2. in the last five years prior to the individual's application for membership, the individual has been involved, as a perpetrator, in a serious incident of assault or violence, or in one or more incidents of harassment against any persons working for the Trust or any other NHS Body or any service users or carers or visitors to the Trust or any other NHS Body;
  - 5.1.3. in the last 5 years the individual has been excluded from any of the Trust's premises from which services are provided;
  - 5.1.4. the individual is a vexatious complainant as determined by the Secretary; or

- 5.1.5. the Council of Governors resolves that there are reasonable grounds to believe that the individual is likely to:
  - 5.1.5.1 prejudice the ability of the Trust to fulfil its Principal Purpose or other of its purposes under the Constitution or otherwise to discharge its duties and functions; or
  - 5.1.5.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
  - 5.1.5.3 adversely affect public confidence in the goods or services provided by the Trust; or
  - 5.1.5.4 otherwise bring the Trust into disrepute
- 5.1.6. the individual is a former employee of the Trust and their contract has been terminated due to poor performance or misconduct.
- 5.2. No person who has been expelled from membership of the Trust is to be re-admitted as a member except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors.
- 5.3. The Council of Governors will adopt a process for the removal of members as well as the adjudication of any disputes arising with members.

**ANNEX 5**  
**MODEL ELECTION RULES**

Dated

1 April 2026

# **STANDING FINANCIAL INSTRUCTIONS**

**Incorporating Budgetary Control, the Scheme of Delegation and Financial Limits**

1 April 2026

This document supersedes previous versions of this document.

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# 1 INTRODUCTION

## 1.1 GENERAL – POLICY PURPOSE

- 1.1.1 These Standing Financial Instructions detail the financial responsibilities, policies and procedures adopted by all Trusts within the Group (the Group) being Wirral University Teaching Hospital NHS Foundation Trust. and Wirral Community Health and Care NHS Foundation Trust. They are designed to ensure that each Trust's financial transactions are carried out in accordance with the law and Government policy in order to achieve probity, accuracy, economy, efficiency and effectiveness. They should be used in conjunction with the Scheme of Reservation and Delegation adopted by each Trust.
- 1.1.2 These Standing Financial Instructions identify the financial responsibilities that apply to everyone working for each Trust. They do not provide detailed procedural advice and should be read in conjunction with the detailed departmental and financial procedure notes.
- 1.1.3 You should read these SFIs and be aware of their relevance to you as you discharge your responsibilities if you are:
- (a) A Director of the Group
  - (b) A Service Manager
  - (c) A Senior Manager in a support function
  - (d) A budget holder
  - (e) Involved in raising requisitions and/or placing orders for goods/services on behalf of each Trust
  - (f) Involved in negotiating contracts/other arrangements for the provision of goods/services
  - (g) Involved with the handling and safe custody of patients' monies and valuables
  - (h) Involved in the administration of Charitable Funds
- 1.1.4 Should any difficulties arise regarding the interpretation or application of any of the Standing Financial Instructions then the advice of the Joint Chief Finance Officer must be sought before acting. The user of these Standing Financial Instructions should also be familiar with and comply with the provisions of each Trust's Constitution and the Group's Scheme of Reservation and Delegation.

- 1.1.5 These Standing Financial Instructions are equally applicable to the Trust's Charitable Funds with regards to procurement and non-pay transactions.
- 1.1.6 FAILURE TO COMPLY WITH THE CONSTITUTION, SCHEME OF RESERVATION AND DELEGATION AND / OR THE STANDING FINANCIAL INSTRUCTIONS IS A DISCIPLINARY MATTER THAT COULD RESULT IN DISMISSAL
- 1.1.7 **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 must be reported to the next formal meeting of the Audit Committee for referring action or ratification. All members of the Council of Governors, members of the Board of Directors and staff have a duty to disclose any non-compliance with these Standing Financial Instructions to the Joint Chief Finance Officer as soon as possible.

## 1.2 TERMINOLOGY

- 1.2.1 Any expression to which a meaning is given in the National Health Service Act 2006 (2006 Act), or in Directions made under the 2006 Act, shall have the same meaning in these instructions; and
- (a) **"Audit Committee"** means the Audit Committee of the relevant Trust, regardless of the specific nomenclature of that forum.
  - (b) **"Board"** means the statutory Board of Directors of the Trust.
  - (c) **"Budget"** means a quantified, financial target allocated for an identified purpose, and for a specific period, against which income and expenditure is monitored.
  - (d) **"Budget Holder"** means the Director or employee with delegated authority to manage finances within the confines of the designated budgets (as defined above) for a specific area of each Trust.
  - (e) **"Joint Chief Executive Officer"** means the Joint Chief Executive Officer of the Trust.
  - (f) **"Joint Chief Finance Officer"** means the joint chief financial officer of the Trust or designated individuals within their team.
  - (g) **"Estates Manager"** means the senior Trust manager designated as the responsible individual within the estates team responsible for compliance with these instructions by the Joint Chief Finance Officer
  - (h) **"Executive Director"** means a member of the Group Board.

- (i) **“Governor”** means a member of the Trust’s Council of Governors who is not an Officer of the Trust.
- (j) **“Group”** means the Trusts operating together as a group in accordance with a Provider Collaboration Agreement between the Trusts dated 1<sup>st</sup> April 2026.
- (k) **“Group Board”** means the joint committee of the Trusts established pursuant to sections 65X5 and 65Z6 of the 2006 Act and which has been delegated the functions of the Board in so far as permissible in accordance with a Provider Collaboration Agreement between the Trusts dated 1<sup>st</sup> April 2026.
- (l) **“Non-Executive Director”** means the Joint Chair or a Joint Non-Executive Director as defined in the Constitution of the Trust.
- (m) **“Officer”** means employee of the Trust or any other person holding a paid appointment or office within the Group.
- (n) **“Scheme of Delegation”** means the Scheme of Reservation and Delegation adopted by the Board.
- (o) **“Trust”** means Wirral University Teaching Hospital NHS Foundation Trust or Wirral Community Health and Care NHS Foundation Trust as the context requires.

1.2.2 Wherever the title Joint Chief Executive Officer, Joint Chief Finance Officer or other nominated officer is used in these instructions, it shall be deemed to include such other Director or staff who have been duly authorised to represent them.

1.2.3 Wherever the term "staff" is used and where the context permits it shall be deemed to include staff of third parties contracted to the Trust when acting on behalf of the Trust.

### 1.3 RESPONSIBILITIES AND DELEGATION

1.3.1 The Board exercises financial supervision and control by:

- (a) formulating the financial strategy;
- (b) requiring the submission and approval of budgets within overall income;
- (c) defining and approving essential features in respect of important procedures and financial systems (including the need to obtain value for money); and

- (d) defining specific responsibilities placed on members of the Board, the Group Board and staff as indicated in the Scheme of Delegation.
- 1.3.2 The Group Board may delegate responsibility for the performance of the functions delegated to it by the Boards in accordance with the Scheme of Delegation.
- 1.3.3 Within these Standing Financial Instructions, it is acknowledged that the Joint Chief Executive Officer is ultimately accountable to the Board of Directors, and as accounting officer, to the Secretary of State, for:
- (a) ensuring that the Board and the Group Board meets their obligation to perform their functions within the available financial resources;
  - (b) ensuring all staff are notified of the requirements of the Standing Financial Instructions;
  - (c) delegating the management of resources to Officers of each Trust in accordance with the Scheme of Delegation;
  - (d) ensuring that each Trust's financial obligations and targets are met; and
  - (e) taking overall responsibility for each Trust's system of internal control.
- 1.3.4 In performing these duties the Joint Chief Executive will take due consideration of the advice given by the Joint Chief Finance Officer. It is a duty of the Joint Chief Executive Officer to ensure that existing members of the Board and employees and all new appointees are notified of, and understand, their responsibilities within these Instructions.
- 1.3.5 The Joint Chief Finance Officer is responsible for:
- (a) implementing each 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 each Trust's transactions, in order to disclose, with reasonable accuracy, the financial position of each Trust at any time;

and, without prejudice to any other functions of each Trust, and its staff, the duties of the Joint Chief Finance Officer include:

- (d) the provision of advice in relation to Finance to the Board, the Group Board and staff;
- (e) the design, implementation and supervision of systems of internal financial control; and
- (f) the preparation and maintenance of such accounts, certificates, estimates, records and reports as each Trust may require for the purpose of carrying out its statutory duties.

1.3.6 All members of the Board, the Group Board and staff, are responsible for:

- (a) the security of the property of each Trust;
- (b) avoiding loss;
- (c) exercising economy and efficiency in the use of resources; and
- (d) conforming with the requirements of the Constitution, Standing Orders, Standing Financial Instructions, Financial Procedures and the Scheme of Delegation, as well as HM Treasury's guidelines on Managing Public Money

1.3.7 All Budget Holders have a responsibility to:

- (a) monitor activities to ensure resources are utilised in an effective and efficient manner;
- (b) ensure activities are conducted within the constraints of budgets;
- (c) provide all information and explanations required by the Joint Chief Finance Officer to ensure financial control, enacted through the business of the operational meetings, Executive Leadership Team, Finance and Performance Committees and the Group Board; and
- (d) ensure the security of Trust assets including property, equipment and cash.

1.3.8 Any contractor or staff of a contractor or staff of another organisation 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 Joint Chief Executive Officer to ensure that such persons are made aware of this.

1.3.9 For any and all members of the Board and the Group Board and employees who carry out a financial function, the form in which financial

records are kept and the manner in which members of the Board, the Group Board and employees discharge their duties must be to the satisfaction of the Joint Chief Finance Officer.

## **2 AUDIT**

### **2.1 AUDIT COMMITTEE**

- 2.1.1 In accordance with the Constitution the Board shall formally establish an Audit Committee, with clearly defined terms of reference, and following guidance from the NHS Audit Committee Handbook, which will provide an independent and objective view of internal control including financial control.
- 2.1.2 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 wish to raise, the Chair of the Audit Committee should raise the matter at a full meeting of the Group Board. Exceptionally, the matter may need to be reported to NHS England.

### **2.2 Joint Chief Finance Officer**

- 2.2.1 The Joint Chief Finance Officer is responsible for:
- (a) deciding at what stage to involve the police and NHS Counter Fraud Authority (NHSCFA), in conjunction with the Local Counter Fraud Specialist (LCFS), in cases of misappropriation and other irregularities involving fraud or corruption; and
  - (b) ensuring that an annual internal audit report is prepared for the consideration of the Audit Committee in accordance with current Department of Health and Social Care and NHS England guidance.
- 2.2.2 The Joint Chief Finance Officer 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; and
  - (b) ensuring that the internal audit exists to review, evaluate and report on the effectiveness of internal financial control to meet mandatory audit standards;

The Joint Chief Finance Officer or designated auditors, either on their own initiative or at the request of the Audit Committee, are entitled to require and receive without necessarily giving prior notice:

- (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 staff of the Trust;
- (c) the production of any cash, stores or other property of each Trust under a member of staff's control; and
- (d) explanations concerning any matter under investigation.

## **2.3 ROLE OF INTERNAL AUDIT**

2.3.1 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 each 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) the adequacy of management action in response to audit recommendations.

2.3.2 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 Joint Chief Finance Officer must be notified immediately, who shall in turn notify the Local Security Management Specialist (LSMS), and/or the Chair of the Audit Committee.

2.3.3 The Chief Internal Auditor will normally attend Audit Committee meetings and has a right of access to all Audit Committee members, the Group Chair and the Joint Chief Executive Officer.

- 2.3.4 The Chief Internal Auditor shall report and be accountable to the Joint Chief Finance Officer who shall refer audit reports to the appropriate officers designated by the Joint Chief Executive Officer.

## **2.4 EXTERNAL AUDIT**

- 2.4.1 Each Trust will remain responsible for its own external audit. The external auditor is appointed by the Council of Governors of the Trust and paid for by each Trust. The Auditor must comply with the principles set out in the Code of Audit Practice issued by the National Audit Office.
- 2.4.2 The Council of Governors must ensure a cost-efficient external audit service is provided and periodically review the arrangements in conjunction with the Audit Committee.

## **2.5 FRAUD, BRIBERY AND CORRUPTION**

- 2.5.1 In line with best practice the Joint Chief Executive Officer and Joint Chief Finance Officer shall monitor and ensure compliance with the NHS Counter Fraud Authority Counter Fraud Manual.
- 2.5.2 Each Trust shall nominate a suitable person to carry out the duties of the Local Counter Fraud Specialist as specified by the NHS Counter Fraud Authority Counter Fraud Manual and guidance.
- 2.5.3 A fraud offence can be committed by any person who dishonestly makes a false representation to make a gain for themselves or another or dishonestly fails to disclose to another person, information which they are under a legal duty to disclose, or commits fraud by abuse of position, including any offence as defined in the Fraud Act 2006.

Examples of fraud (though not exhaustive) may include:

- (a) Falsely claiming to be sick or working elsewhere whilst sick
- (b) Falsifying time records e.g. claiming pay for time not worked
- (c) Undertaking private work during NHS time
- (d) Unauthorised private use of NHS equipment with intent to avoid a charge or payment
- (e) Submitting altered/bogus invoices or claims for payment
- (f) Making false claims for subsistence & expenses

- (g) Falsifying any official records
  - (h) Failing to declare criminal convictions to gain employment
- 2.5.4 The Bribery Act 2010 provides four separate individual and corporate offences defined below.
- 2.5.5 It is an offence to:
- (a) promise, offer or give (sec.1 - active bribery);
  - (b) or request, agree to receive or accept (sec.2 - passive bribery);
- an advantage (financial or otherwise), in circumstances involving the improper performance of a relevant function or activity;
- (c) bribe a foreign public official (sec.6); or
  - (d) negligently fail to prevent a bribe (sec.7 – corporate offence).
- 2.5.6 In order to present a defence to the charge of ‘failing to prevent bribery’ an organisation must have sufficient and adequate procedures in place to prevent bribery by associated persons including those set out below. Full details can be obtained from the Anti-Fraud, Bribery and Corruption Policy.
- 2.5.7 All staff and contractors should be made aware of the Bribery Act 2010 to ensure compliance. Any breach of the Bribery Act 2010 may result in criminal proceedings.
- 2.5.8 The Local Counter Fraud Specialist shall report to the Joint Chief Finance Officer and shall work with staff in the NHS Counter Fraud Authority in accordance with the NHS Counter Fraud Manual.
- 2.5.9 In accordance with the Trust’s Anti-Fraud, Bribery and Corruption Policy staff must report suspicions of NHS fraud or bribery to the Joint Chief Finance Officer and / or the LCFS or via the secure NHS Fraud and Corruption [online tool](#) or Reporting Line (0800 028 40 60). The NHS Fraud and Corruption Reporting Line offers complete confidentiality, and callers can remain anonymous if they wish. Further details on reporting suspected fraud and bribery can be found in the Trust’s Anti-Fraud, Bribery and Corruption Policy.
- 2.5.10 The Joint Chief Finance Officer must inform the LCFS if a referral is made directly to them so that appropriate recording and action can be taken. The LCFS will seek approval from the Joint Chief Finance Officer to pursue an investigation into any alleged incidents of fraud or bribery. The LCFS will work with HR to ensure that any criminal and disciplinary processes are closely aligned and support each other and the most appropriate sanctions or outcomes. The LCFS will regularly report on each

investigation to the Joint Chief Finance Officer and ensure that wider learning points and implications from any investigation are properly reviewed and changes implemented as appropriate.

- 2.5.11 The Joint Chief Finance Officer should also prepare a “Counter Fraud Policy and Response Plan” that sets out the action to be taken both by persons detecting a suspected fraud and those persons responsible for investigating it.
- 2.5.12 The Local Counter Fraud Specialist will attend Audit Committee meetings when necessary and has a right of access to all Audit Committee members, the Group Chair and Joint Chief Executive Officer.
- 2.5.13 The Local Counter Fraud Specialist shall report to and be accountable to the Joint Chief Finance Officer. The reporting system for Counter Fraud services shall be agreed between the Joint Chief Finance Officer, the Audit Committee and the Local Counter Fraud Specialist and shall comply with the guidance on reporting contained in the NHS Counter Fraud Manual and guidance. The reporting system shall be reviewed at least every 3 years.
- 2.5.14 The Local Counter Fraud Specialist will provide a written report, at least annually, on counter fraud work within each Trust. Furthermore, progress reports will be submitted and presented by the LCFS to meetings of the Audit Committee throughout the financial year.
- 2.5.15 Each Trust is committed to pursuing and / or supporting NHS Counter Fraud Authority in pursuing the full range of available sanctions (criminal, civil and disciplinary) against those found to have committed fraud and / or bribery. Each Trust shall seek to recover (or support the NHS Counter Fraud Authority in seeking to recover) NHS funds that have been lost or diverted through fraud and / or bribery.

## **2.6 SECURITY MANAGEMENT**

- 2.6.1 In line with best practice, the Joint Chief Executive Officer shall monitor and ensure compliance with NHS England guidance on NHS security management.
- 2.6.2 Each 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 and Social Care's guidance on NHS security management.
- 2.6.3 Each Trust shall prepare a security policy that sets out measures to protect staff, visitors, premises and assets.

### **3 BUSINESS PLANNING, BUDGETARY CONTROL, AND MONITORING**

#### **3.1 PREPARATION AND APPROVAL OF BUSINESS PLANS AND BUDGETS**

- 3.1.1 The Joint Chief Executive Officer, with the assistance of the Joint Chief Finance Officer, shall compile and submit to the Group Board operational business plans in accordance with the guidance issued by NHS England. Any operational business plans shall be reconcilable to an annual update of the financial proforma, which the Joint Chief Finance Officer will prepare and submit to the Group Board. Operational business plans 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; and
  - (c) any other relevant information as required by NHS England's planning guidance.
- 3.1.2 Prior to the start of the financial year, or in accordance with the NHS England planning guidelines, the Joint Chief Finance Officer will, on behalf of the Joint Chief Executive Officer, prepare and submit a financial plan that is congruent with system requirements for approval by the Group Board. Such budgets will:
- (a) be in accordance with the aims and objectives set out in operational business plans;
  - (b) accord with workload and workforce plans;
  - (c) be produced following discussion with appropriate Budget Holders;
  - (d) be prepared within the limits of available funds;
  - (e) demonstrate the achievement of key financial targets such as strategic financial objectives of each Trust and the regulatory financial regime as advised by NHS England; and
  - (f) identify potential risks and mitigations.
- 3.1.3 The Joint Chief Finance Officer shall monitor financial performance against budget and business plan, periodically review them, and report financial performance to the Group Board and advise on any actions they deem appropriate. Reports will also be made to NHS England as required, using the appropriate templates issued by NHS England.

- 3.1.4 Officers shall provide the Joint Chief Finance Officer with all financial, statistical and other relevant information as necessary for the compilation of such business plans, estimates and forecasts.
- 3.1.5 The Board, acting through the Group Board, has overall responsibility to ensure that adequate financial systems are in place to monitor and control financial performance to enable each Trust to fulfil its statutory responsibility to meet its annual revenue and capital targets.
- 3.1.6 The Joint Chief Finance Officer has the authority to request Budget Holders to formally sign off annual budgets, as an acknowledgement of ownership.
- 3.1.7 The Joint Chief Finance Officer has a responsibility to ensure that adequate training is delivered on an on-going basis to Budget Holders to help them manage budgets successfully.

## **3.2 BUDGETARY DELEGATION**

- 3.2.1 The Joint Chief Executive Officer may delegate the management of a budget to permit the performance of a defined range of activities, including pooled budget arrangements under Sections 65Z6 and 75 of the 2006 Act. 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; and
  - (f) the provision of regular reports.
- 3.2.2 From time to time NHS England may issue guidance or instructions regarding additional approval processes for certain types of Trust expenditure. Where Foundation Trusts are required to comply, NHS England's approval process, as defined by its guidance, will override the authority to authorise as laid out in these Standing Financial Instructions, only for the specific type of expenditure concerned.
- 3.2.3 In cases where compliance with any additional approval regime by NHS England is voluntary, the Joint Chief Executive Officer will determine the appropriate course of action for each Trust and will notify budget holders accordingly, with the support of the Joint Chief Finance Officer.

- 3.2.4 The Joint Chief Executive Officer and delegated Budget Holders must not exceed the budgetary total or virement limits set by the Group Board. These are set out in the Scheme of Delegation in Appendix One.
- 3.2.5 Expenditure for which no provision has been made in an approved budget, and which is not subject to funding under delegated powers of virement shall only be incurred after proper authorisation - i.e. by the Joint Chief Executive Officer, Joint Chief Finance Officer or the Group Board as appropriate within delegated limits.
- 3.2.6 Unless approved by the Joint Chief Executive Officer, after taking the advice of the Joint Chief Finance Officer, budgets shall only be used for the purpose for which they were provided. Any budgeted funds not required for their designated purpose(s) revert to the immediate control of the Joint Chief Finance Officer, subject to any authorised use of virement.
- 3.2.7 Non-recurring budgets are not to be used to finance recurring expenditure without the authority in writing of the Joint Chief Finance Officer.

### **3.3 BUDGETARY CONTROL AND REPORTING**

- 3.3.1 The Joint Chief Finance Officer will devise and maintain systems of budgetary control. These will include:
- (a) regular financial reports to the Group Board in a form approved by the Group Board containing:
    - (i) performance measures required by NHS England;
    - (ii) income and expenditure to date;
    - (iii) the balance sheet;
    - (iv) cash position;
    - (v) capital project spend and projected outturn against plan;
    - (vi) explanations of any material variances from plan;
    - (vii) details of any corrective action where necessary and the Joint Chief Executive Officer's and/or Joint Chief Finance Officer'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.

3.3.2 Each Budget Holder is responsible for ensuring that:

- (a) 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;
- (b) no permanent staff are appointed without the approval of the Joint Chief Executive Officer (who may delegate responsibility down to the Joint Chief People Officer and/or Establishment Pay and Control Panel) other than those provided for within the available resources and workforce establishment as approved by the Group Board;
- (c) ensuring all information requested by the Finance department for use in the compiling and monitoring of budgets is supplied promptly;
- (d) notifying the Finance department if it is believed that any budgetary funds are not required;
- (e) no non-recurring budgets are used to fund recurring expenditure.

3.3.3 Any budget virements must only be made in compliance with each Trust's virement policy. Each Trust's detailed virement policy is held by Finance.

3.3.4 The Joint Chief Executive Officer, through the executive management team, is responsible for identifying and implementing cost improvements and income generation initiatives in accordance with the requirements of the Annual Business Plan and a balanced budget.

3.3.5 The Joint Chief Finance Officer shall keep the Joint Chief Executive Officer and the Group Board informed of the financial consequences of changes in policy, pay awards, and other events and trends affecting budgets and shall advise on the financial and economic aspects of future plans and projects.

## **3.4 MONITORING RETURNS**

3.4.1 The Joint Chief Executive Officer is responsible for ensuring that the appropriate monitoring forms are submitted to the requisite monitoring organisation.

## **4 ANNUAL ACCOUNTS AND REPORTS**

- 4.1 The Joint Chief Executive Officer, on behalf of each Trust in the Group, will:
- 4.1.1 ensure that financial returns are prepared in such a form as directed by NHS England, specifically in accordance with International Financial Reporting Standards (as applied in the NHS England Annual Reporting Manual and the Department of Health Group Accounting Manual as well as HM Treasury's Financial Reporting Manual (FReM); and
  - 4.1.2 ensure that the annual report and accounts and any report of the external auditor on them, are laid before Parliament and send a copy to NHS England.
- 4.2 The external auditor shall audit each Trust's annual report and accounts. Each Trust's audited annual accounts must be presented to the Council of Governors and the annual members' meeting of that Trust.
- 4.3 The Joint Chief Executive Officer on behalf of each Trusts in the Group will produce an annual report for each Trust, in accordance with the requirements of the Constitution and NHS England's guidance, and shall present it at a meeting of the Council of Governors and the annual members' meeting of the relevant Trust.

## **5 BANK AND GOVERNMENT BANKING SERVICE (GBS) ACCOUNTS**

### **5.1 GENERAL**

- 5.1.1 The Joint Chief Finance Officer is responsible for managing each Trust's and Charitable Funds banking arrangements and for advising each 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 NHS England.
- 5.1.2 The Group Board shall approve the banking arrangements.
- 5.1.3 The Joint Chief Finance Officer is responsible for:
- (a) bank accounts and Government Banking Service (GBS) accounts;
  - (b) ensuring payments made from bank or GBS accounts do not exceed the amount credited to the account except where arrangements have been made;
  - (c) reporting to the Group Board all arrangements made with each Trust's bankers for accounts to be overdrawn; and
  - (d) ensuring cash is managed in line with conditions of each Trust's NHS Provider Licence and its investment and borrowing strategies.

## **5.2 BANKING PROCEDURES**

- 5.2.1 The Joint Chief Finance Officer will prepare 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 make payments deposits and investments on behalf of each Trust.
- 5.2.2 The Joint Chief Finance Officer must advise each Trust's bankers in writing of the conditions under which each account will be operated. All funds shall be held in accounts in the name of each Trust. No officers other than the Joint Chief Finance Officer shall open any bank account in the name of each Trust.
- 5.2.3 General operational delegation to Financial Services for cash and banking activity is listed in the Scheme of Delegation.

## **5.3 REVIEW**

- 5.3.1 The Joint Chief Finance Officer will review the banking and investment arrangements of each Trust at regular intervals to ensure they reflect best practice and represent best value for money.

## **6 INCOME, FEES AND CHARGES AND SECURITY OF CASH, CHEQUES AND OTHER NEGOTIABLE INSTRUMENTS**

### **6.1 INCOME SYSTEMS**

- 6.1.1 The Joint Chief Finance Officer is responsible for designing, maintaining and ensuring compliance with systems for the proper recording, invoicing, collection and coding of all monies due. These systems shall include income due under contracts or extra-contractual arrangements for the provision of Trust services. All Trust staff should follow the formal procedures laid down by the Finance department and by NHSE with regard to the recording, invoicing, collection and coding of all monies due. Under no circumstances may invoices be raised on behalf of the Trust by anyone other than Finance.
- 6.1.2 The Joint Chief Finance Officer is also responsible for the prompt banking of all monies received.
- 6.1.3 In no circumstances shall staff accept cash payments in excess of £5,000 on behalf of the Trust.

### **6.2 FEES AND CHARGES**

- 6.2.1 Each Trust shall refer to NHS England's Approved Costing Guidance in setting prices for contracts and services provided to other organisations, where applicable. All pricing should take into account the cost of delivering the service, including mitigation and contingency for risk, the cost of overheads and the need of each Trust to deliver a surplus.
- 6.2.2 The Joint Chief Finance Officer is responsible for approving and regularly reviewing the level of all fees and charges other than those determined by NHS England or by statute. Independent professional advice on matters of valuation shall be taken as necessary.
- 6.2.3 Where sponsorship income (including items in kind such as subsidised goods or loans of equipment) is considered the Trust's *Managing Conflicts of Interest Policy* must be followed. Only the Joint Chief Executive or Joint Chief Finance Officer can approve commercial sponsorship proposals.
- 6.2.4 The Trust's Research Department approves, supports and administers research and development ('clinical') grants.
- 6.2.5 Negotiations and applications for grant income (Trust or Charity) which does not fund research and development must have the approval of the Joint Chief Finance Officer.

- 6.2.6 All staff must inform the Joint Chief Finance Officer promptly of money due arising from transactions which they initiate/deal with, including all contracts, leases, tenancy agreements, private patient undertakings and other transactions.

### **6.3 DEBT RECOVERY**

- 6.3.1 The Joint Chief Finance Officer is responsible for the appropriate recovery action on all outstanding debts.
- 6.3.2 Any potential write off of bad debt shall be processed through the losses and special payments process and shall be authorised by the Joint Chief Finance Officer or direct Finance reports.
- 6.3.3 Income not received should be dealt with in accordance with losses procedures. This includes the use of external debt recovery agents.
- 6.3.4 Should any staff detect that an overpayment has been made they should report it immediately to the Joint Chief Finance Officer and direct finance reports in order that recovery procedures can be initiated. Where appropriate, each Trust's Local Counter Fraud Specialist should be consulted.

### **6.4 SECURITY OF CASH, PETTY CASH, CHEQUES AND OTHER NEGOTIABLE INSTRUMENTS**

- 6.4.1 The Joint Chief Finance Officer 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) the provision of adequate facilities and systems for staff whose duties include collecting and holding cash or cheques, including the provision of safes or lockable cash boxes, the procedures for keys, and for coin operated machines; and
  - (c) prescribing systems and procedures for handling cash and negotiable securities on behalf of each Trust.
- 6.4.2 Staff shall be informed in writing on appointment, of their responsibilities and duties for the collection, handling or distribution of cash, cheques, etc. Any staff whose duty it is to collect or hold cash may be audited at the Joint Chief Finance Officer's discretion to ensure the appropriate controls are in place for the safe keeping of the cash.
- 6.4.3 During the absence (e.g. on holiday) of the holder of a safe or cash-box key, the member of staff who acts in their place shall be subject to the same controls as the normal holder of the key. There shall be written

discharge for the safe and/or cash-box contents on the transfer of responsibilities and the discharge document must be retained for inspection.

- 6.4.4 All cash, cheques and other forms of payment received by any other staff shall be passed immediately to the holder of a safe or cash-box key or to the cashier, from whom a signed receipt shall be obtained. No member of staff should keep Trust cash, cheques or other forms of payment, for whatever purpose, on Trust premises unless the Joint Chief Finance Officer is aware of the existence of such arrangements and can support and be assured on the systems and processes for the probity of such arrangements
- 6.4.5 Official money shall not under any circumstances be used for private use or the encashment of private cheques, or I.O.U.s.
- 6.4.6 Any loss or shortfall of cash, cheques or other cash equivalents, however occasioned, shall be reported immediately to the Finance Department in accordance with the agreed procedure for reporting losses.
- 6.4.7 All cheques, postal orders, cash etc., shall be banked intact. Disbursements shall not be made from cash received, except under arrangements approved by the Joint Chief Finance Officer.
- 6.4.8 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 each Trust is not to be held liable for any loss, and written indemnities must be obtained from the organisation or individuals absolving each Trust from responsibility for any loss.
- 6.4.9 The Joint Chief Finance Officer may, if appropriate and at his/her discretion, allow Petty Cash floats to be kept. All floats must be operated within each Trust's petty cash policy. Failure to adhere to this policy will be regarded as a breach of these SFIs. Each float must have a designated float holder, and that float holder will be responsible for the security of the cash, the maintenance of the petty cash records and to appropriately top up the float. The Joint Chief Finance Officer retains the right to close floats if he/she has concerns about the appropriateness of their operation.
- 6.4.10 Each Trust will hold credit cards in order to support the procurement process in allowing more flexibility to purchase goods but limited to exceptional circumstances. Standard procurement processes should be followed and suppliers set up through the usual procurement system to ensure good procurement governance. If a Trust credit card is used then the relevant Trust's procurement processes will still need to be followed but the credit cards will enable quicker payments to be made.

6.4.11 Access to each Trust credit card will be limited to the Finance and Procurement Department, the Recruitment team and the Joint Chief Executive. The cards whilst not in use will be kept in a secure safe. Local procedures need to be in place to ensure the security of the credit card.

## 7 AGREEMENTS FOR PROVISION OF SERVICES

### 7.1 LEGALLY BINDING AGREEMENTS

- 7.1.1 The Joint Chief Executive, as the Accountable Officer, is responsible for ensuring the trust enters into suitable legally binding agreements with service commissioners for the provision of NHS services. All agreements should aim to implement the agreed priorities contained within the relevant plans and wherever possible, be based upon integrated care pathways to reflect expected patient experience. In discharging this responsibility, the Joint Chief executive should take into account:
- a) the standards of service quality expected;
  - b) the relevant national service framework (if any);
  - c) the provision of reliable information on cost and volume of services;
  - d) that agreements build where appropriate on existing partnership arrangements;
  - e) any model contracts issued by the department of health and social care for use by commissioners; and
  - f) that contracts are based on integrated care pathways.
- 7.1.2 The appropriate NHS Standard Contract must be developed and adopted involving key stakeholders including clinicians, Patient and Public Panel representation, appropriate service/business management, Quality, Contracting and Finance Directorate representation, and public health professionals when appropriate. It will reflect knowledge of local needs and inequalities. This will require the Joint Chief Executive to ensure that the Trust works with all partner agencies involved in both the delivery and commissioning of the service required. The contract 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.
- 7.1.3 The Joint 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 contract. This will include information on costing arrangements.

## **8 TERMS OF SERVICE, ALLOWANCES AND PAYMENT OF MEMBERS OF THE BOARD AND EXECUTIVE COMMITTEE AND EMPLOYEES**

### **8.1 REMUNERATION AND TERMS OF SERVICE**

8.1.1 In accordance with the Constitutions of each Trust, the Board shall establish a Remuneration Committee, to consider remuneration and related matters as set out in its terms of reference. The terms of reference shall include the posts that fall within its area of responsibility, its composition, and the arrangements for reporting.

8.1.2 Except where Agenda for Change rules apply, the Group Board will approve proposals presented by the Joint Chief Executive Officer for the setting of remuneration and conditions of service for those staff not covered by the Remuneration Committee.

### **8.2 FUNDED ESTABLISHMENT**

8.2.1 The workforce plans incorporated within the annual budget will form the funded establishment.

8.2.2 The funded establishment of any department may not be varied without the approval of the Joint Chief Finance Officer, directly or through adherence to relevant finance procedures.

### **8.3 STAFF APPOINTMENTS**

8.3.1 No Executive Director or staff 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 Joint Chief Executive Officer as detailed in the Scheme of Delegation; and

(b) within the limit of their approved budget and funded establishment.

8.3.2 The Group Board will approve procedures presented by the Joint Chief Executive Officer for the determination of commencing pay rates, condition of service, etc., for staff.

8.3.3 The Joint Chief Finance Officer shall devise and maintain a system of establishment controls which shall include regular reports to each manager on the staff in post in their departments.

### **8.4 PROCESSING PAYROLL**

- 8.4.1 The processing of Payroll is outsourced to an external service provider. The Joint Chief People Officer shall ensure, via the contractual arrangements, that arrangements are in place 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;
  - (d) agreeing method of payment; and
  - (e) maintaining and enforcing a Trust under and overpayment policy and seeking to recover any overpayments in line with that policy
- 8.4.2 The Joint Chief People Officer will monitor performance against the contract of the following:
- (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 legislation;
- 8.4.3 The Joint Chief Finance Officer will monitor performance against the contract of the following:
- (a) methods of payment available to various categories of employee and officers;
  - (b) procedures for payment by bank credit to staff and Officers;
  - (c) procedures for the recall of bank credits;
  - (d) pay advances and their recovery;
  - (e) maintenance of regular and independent reconciliation of pay control accounts;
  - (f) separation of duties of preparing records and handling cash;

- (g) a system to ensure the recovery from leavers of sums of money and property due by them to each Trust; and
- (h) delegated to the Joint Chief People Officer, a system to record and report specific employee costs as required by guidance for example “high-cost off-payroll” employee costs.

8.4.4 Appropriately nominated managers within each Trust have delegated responsibility for:

- (a) submitting new starter / hire notifications, time records and other notifications in the form prescribed by the Joint Chief People Officer;
- (b) submitting time records, and other notifications in accordance with agreed timetables;
- (c) completing time records and other notifications in accordance with the Joint Chief Finance Officer's instructions and in the form prescribed by the Joint Chief Finance Officer;
- (d) ensuring all staff absences are appropriately authorised. In the event of unauthorised absence the line manager is responsible for notifying payroll services to ensure payment for unauthorised absence is prevented or recovered;
- (e) submitting termination forms in the prescribed form immediately upon knowing the effective date of member of staff's resignation, termination or retirement. Where a member of staff fails to report for duty or to fulfil obligations in circumstances that suggest they have left without notice, the Joint Chief Finance Officer must be informed immediately. Failure to do this may end up in overpayments of salary by the Trust, and is viewed as a serious breach of protocol; and
- (f) submitting all employee-related updates promptly to avoid over or under payment and to ensure that staff records are accurate and up to date for their area of responsibility. These requirements include but are not limited to new starters, change forms and leavers.

8.4.5 Regardless of the arrangements for providing the payroll service, the Joint Chief Finance Officer 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 and change forms are made available for the collection of payroll deductions and payment of these to appropriate bodies.

- 8.4.6 Competitive tenders will be sought at least every 5 years for the Trust's payroll services. The results of the tendering exercise shall be reported to the Group Board.

## **8.5 CONTRACTS OF EMPLOYMENT**

- 8.5.1 The Board shall delegate responsibility to the Joint Chief People Officer for:
- (a) ensuring that all employees are issued with a Contract of Employment in a form approved by the Group Board and which complies with employment legislation; and
  - (b) dealing with variations to, or termination of, contracts of employment (except those cases subject to formal HR processes. Refer to the relevant policy for delegated responsibility) upon the advice of the Joint Chief Finance Officer on affordability.

## **9 NON-PAY EXPENDITURE**

### **9.1 DELEGATION OF AUTHORITY**

- 9.1.1 The Group Board will approve the level of non-pay expenditure on an annual basis and the Joint Chief Finance Officer will determine the level of delegation to budget managers.
- 9.1.2 The Joint Chief Finance Officer will set out and maintain:
- (a) the list of managers who are authorised to approve requisitions for the supply of goods and services; and
  - (b) the maximum level of each requisition and the system for authorisation above that level.
- 9.1.3 The Joint Chief Executive Officer shall set out procedures on the seeking of professional advice regarding the supply of goods and services.

### **9.2 CHOICE, REQUISITIONING, ORDERING, RECEIPT AND PAYMENT FOR GOODS AND SERVICES**

- 9.2.1 Any member of staff authorised to requisition goods or services shall comply with procedures issued by the Joint Chief Finance Officer and, in choosing the item to be supplied or the service to be performed, shall always obtain the best value for money. In so doing, the advice of the Trust's Procurement Department shall be sought. Where this advice is not acceptable to the requisitioner, the Joint Chief Finance Officer (and/or the Joint Chief Executive Officer) shall be consulted.

9.2.2 Requisitioners must in all circumstances follow the electronic systems for receipt of goods.

9.2.3 The Joint Chief Finance Officer will:

- (a) advise the Group Board regarding the setting of thresholds above which quotations (competitive or otherwise) or formal tenders must be obtained; and, once approved, the thresholds will be incorporated in the Scheme of Delegation and regularly reviewed;
- (b) prepare procedural instructions (where not already provided in the Scheme of Delegation or procedure notes for budget holders) 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 database of 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 in accordance with a published procedure;
    - 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; and

- the account is in order for payment.
- (iii) A timetable and system for submission to the Joint Chief Finance Officer of accounts for payment; provision shall be made for the early submission of accounts subject to cash discounts or otherwise requiring early payment; and
- (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, (except as below).

9.2.4 Prepayments are only permitted where exceptional circumstances apply and with the explicit approval of the Joint Chief Finance Officer. In such instances:

- (a) Prepayments are only permitted where the financial advantages outweigh the disadvantages (i.e. cashflows must be discounted to NPV using the National Loans Fund (NLF) rate plus 2%);
- (b) the appropriate Executive Director 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 their commitments;
- (c) the Joint Chief Finance Officer will need to be satisfied with the proposed arrangements before contractual arrangements proceed; and
- (d) the budget holder is responsible for ensuring that all items due under a prepayment contract are received and he/she must immediately inform procurement or the appropriate Director or Joint Chief Executive Officer if problems are encountered.

9.2.5 All purchases of non-Pharmacy goods and services must be made utilising the advice and services of the Trust's Procurement Department. Non-Pharmacy requisitions must be raised through the Trust's order processing system (NEP Oracle Cloud).

9.2.6 Managers and officers must ensure that they comply fully with the guidance and limits specified by the Joint Chief Finance Officer, and by the Procurement Department and that:

- (a) all contracts (other than for a simple purchase permitted within the Scheme of Delegation delegated budget), leases, tenancy agreements and other commitments which may result in a liability

are notified to the Joint Chief Finance Officer in advance of any commitment being made and then signed by the appropriate Director or the Joint Chief Executive Officer or their designee;

- (b) contracts above £12,000 are advertised and awarded in accordance the applicable rules on public procurement and with the full advice and support of the Procurement Department;
- (c) where consultancy advice is being obtained, the procurement of such advice must be in accordance with the current guidance issued by NHS England for foundation trusts. When considering consultancy advice internal approval from the Joint Chief Finance Officer should be sought in line with delegated responsibility limits and always before any business case is sent for external approval from NHS England. Wherever possible the preferred bidder should assist in the preparation of the required business case to NHS England. The term consultancy advice is defined as the provision, to management, of objective advice and assistance relating to strategy, structure, management of operations of an organisation in pursuit of its purposes and objectives. Such assistance will be provided outside the “business as usual” (BAU) environment when in-house skills are not available and will be of no essential consequence and time limited. Services may include the identification of options with recommendations and/or assistance with (but not delivery of) the implementation of solutions. If in any doubt this is to be referred to the Joint Chief Finance Officer for clarification;
- (d) no order shall be issued for any item or items to any firm that has made an offer of gifts, reward or benefit to Directors or staff, 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;
- (e) no requisition/order is placed for any item or items for which there is no budget provision unless authorised by the Joint Chief Finance Officer on behalf of the Joint Chief Executive Officer;
- (f) all goods, services or works are ordered on an official purchase order;
- (g) verbal orders (orders without a corresponding requisition and purchase order number) must only be issued very exceptionally - by a member of staff designated by the Joint Chief Executive

Officer or Joint Chief Finance Officer and only in cases of emergency or urgent necessity. These must be confirmed by an official order prior to the invoice being received;

- (h) orders are not split or otherwise placed in a manner devised so as to avoid the financial thresholds or regulatory guidance;
- (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 Directors/staff authorised to certify invoices are notified to the Joint Chief Finance Officer;
- (k) purchases from petty cash are discouraged and thus restricted in value and by type of purchase in accordance with instructions issued by the Joint Chief Finance Officer;
- (l) petty cash records are maintained in a form as determined by the Joint Chief Finance Officer;
- (m) No order shall be made for staff convenience items or foodstuffs or ceremonial dining unless approved by the Joint Chief Finance Officer, Joint Chief Executive Officer or Group Board; and
- (n) payments to local authorities and voluntary organisations made under the powers set out in the 2006 Act shall comply with procedures laid down by the Joint Chief Finance Officer which shall be in accordance with the 2006 Act.

9.2.7 As noted above, there may be occasions where invoices will be processed through the non-purchase order route, particularly in areas where the Trust has in place other systems for requisition goods and services or it is deemed an exceptional payment. Where over a short period, a change of supplier would result in a significant deterioration in the continuity of service, special consideration shall be given to ensure the Trust's operational needs are met without undue disruption. Where no such systems are in place, prior approval must be sought from the Joint Chief Executive Officer or Joint Chief Finance Officer for purchasing through a non-purchase order route.

9.2.8 The Joint Chief Executive Officer and Joint Chief Finance Officer 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 the Health Building Notes. The technical audit of these contracts shall be the responsibility of the relevant Director.

9.2.9 All tenders shall be addressed to the Joint Chief Executive Officer or via the current eProcurement system and accepted processes. Post-tender negotiations should only be undertaken in exceptional circumstances in

accordance with public procurement regulations. The Joint Chief Finance Officer shall ensure that any post-tender negotiations are conducted before a witness, with the newly negotiated prices being recorded.

- 9.2.10 These instructions shall apply equally to expenditure from charitable funds. The Joint Chief Finance Officer shall ensure that any post-tender negotiations are conducted before a witness, with the newly negotiated prices being recorded.

## **10 PROCUREMENT OF GOODS AND SERVICES**

### **10.1 PROCEDURE FOR PROCURING GOODS AND SERVICES**

- 10.1.1 The procedure for procuring goods and services by or on behalf of the Trust or the Charitable Fund shall comply with these Standing Financial Instructions. The operational procedure is attached in Annex 1.
- 10.1.2 An exception from any of the following provisions of these Standing Financial Instructions may be made by the direction of the Group Board or, in an emergency, by the Joint Chair and Joint Chief Executive Officer, in accordance with the Standing Orders of the Board of Directors.
- 10.1.3 Reports shall be made to the Audit Committee when supplies of goods or services are obtained other than as provided for in Standing Financial Instructions.
- 10.1.4 All personnel involved in tendering and contracting activities should be aware of the Bribery Act 2010 and should ensure that all dealings with other organisations and their staff do not bring them in breach the Act. That could leave them open to criminal proceedings being commenced.

### **10.2 COMPETITIVE PROCUREMENT**

- 10.2.1 Each Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the DHSC); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 10.2.2 Formal tendering procedures may be waived, by Officers to whom powers have been delegated by the Joint Chief Executive Officer without reference to the Joint Chief Executive Officer (except in (c) to (f) below) in exceptional circumstances where:

- (a) where the Joint Chief Executive decides that a formal tendering or quotation procedure would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstances are documented and approved. The Trust's Waiver Request form, to be used in all cases;
- (b) where the supply is proposed under special arrangements negotiated by the DHSC in which event the said special arrangements must be complied with; or
- (c) the timescale genuinely precludes competitive tendering because it is considered 'business essential' or has direct bearing on immediate patient care. Failure to plan the work properly is not a justification for single tender; or
- (d) specialist expertise is required and is available from only one source; or
- (e) 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. This reason for waiver cannot be enacted if NHS England approval is required for management consultancy or other defined expenditure; or
- (f) there is a clear benefit to be gained from maintaining continuity with an earlier project and extension terms are included in the original contract. However, in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
- (g) where the work to be executed or the goods or materials to be supplied consist of repairs to or parts for existing machinery or plant or extensions thereto which for practical reasons must be of the same manufacture. This would not include quoted upgrades unless previously considered. Any upgrade outside the original contract is bound by applicable Standing Financial Instructions and procurement rules;
- (h) Where the service to be procured is part of an integrated care system and there is only one provider who can provide the procured service for the benefit of patients and service users. This must be evidenced by documented proof;
- (i) Where the service is procured from a provider with whom the Trust is making a joint tender for services to a commissioner where the Trust is acting as prime provider.

- 10.2.3 The limited application of the single tender rules 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. Single Tender Waivers do not override published procurement thresholds and law.
- 10.2.4 Requesting a Single Tender Waiver begins with consulting the Procurement Department. The Procurement Department shall issue the Single Tender Waiver Form. The process and corresponding documents are available from the Procurement Department.
- 10.2.5 Where it is decided that competitive tendering is not applicable and should be waived by virtue of (c) to (f) above the fact of the waiver and the reasons are documented and reported by the Joint Chief Executive Officer to the Group Board and the Audit Committee in formal meetings. Provided that in all cases where competition is waived the reasons shall be set down in a permanent record, and that non-competitive offers shall be obtained in writing. All final documentation including the Single Tender Waiver and corresponding papers and communications will be electronically and physically filed as appropriate.
- 10.2.6 Except where 10.2.2 applies, the Board shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and having regard to their capacity to supply the goods or materials or to undertake the services or works required.

### **10.3 QUOTATIONS FOR GOODS AND SERVICES**

Quotations in writing are required where formal tendering procedures are waived under 10.2.2 (a) or (c) and where the intended expenditure or income exceeds, or is reasonably expected to exceed £10,000 plus VAT.

- 10.3.1 Where quotations are required, they should be based on specifications prepared by, or on behalf of, the Group Board and obtained from at least three firms/individuals where the spend is expected to be greater than £10,000 plus VAT up to £50,000 plus VAT.
- 10.3.2 Quotations should be in writing.
- 10.3.3 All quotations must be conducted by the Procurement Department. They should be treated as confidential and should be retained for inspection by Procurement.
- 10.3.4 The Joint Chief Executive Officer or his nominated officer should evaluate the quotations and select the one that gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.

- 10.3.5 Non-competitive quotations in writing may be obtained for the following purposes:
- (a) 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 Joint Chief Executive Officer, possible or desirable to obtain competitive quotations;
  - (b) the goods/services are required urgently and/or are not obtainable under existing contracts; and/or
  - (c) if items estimated to be within the expenditure or income limits set out in the Scheme of Delegation subsequently prove to be beyond those limits reference shall be made to the Joint Chief Finance Officer or his authorised deputy in accordance with the waiver procedures outlined above.
- 10.3.6 The Joint Chief Executive Officer shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Group Board may also determine from time to time that in-house services should be market tested by competitive tendering.

## **10.4 PRIVATE FINANCE**

- 10.4.1 When the Group Board proposes, or is required, to use finance provided by the private sector the following should apply:
- (a) The Joint Chief Executive Officer 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 any organisational delegated limits, a business case must be referred for approval or treated as per current NHS England guidelines.
  - (c) The proposal must be specifically agreed by the Group Board in the light of such professional advice as should reasonably be sought in particular with regard to vires.
  - (d) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

## **10.5 PERSONNEL AND AGENCY OR TEMPORARY STAFF CONTRACTS**

The Joint Chief Executive Officer shall nominate Officers with delegated authority to enter into contracts for the employment of other Officers, to authorise regrading of staff, and enter into contracts for the employment of agency staff or temporary staff. Governance on Agency and Temporary staffing shall be per current approved DHSC

or NHS England published guidance as applicable for the Trust. Documentation and guidance will be published and disseminated as appropriate once recognised and ratified by the appropriate committee and or the Group Board.

## **10.6 CANCELLATION OF CONTRACTS**

Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service, the Trust shall seek to include in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by them or acting on their behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by them or acting on their behalf shall have committed any offence under the Bribery Act 2010 and other appropriate legislation.

## **10.7 DETERMINATION OF CONTRACTS FOR FAILURE TO DELIVER GOODS OR MATERIAL**

Each Trust shall seek to include in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. Each Trust shall further seek to secure within such contractual clause that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

## **10.8 CONTRACTS INVOLVING FUNDS HELD ON TRUST**

Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

## **10.9 IN-HOUSE SERVICES**

10.9.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be setup:

- (a) specification group, comprising the Joint Chief Executive Officer or nominated Officer(s), Procurement and specialist(s);

- (b) in-house tender group, comprising representatives of the in-house team, a nominee of the Joint Chief Executive Officer and technical support; and
  - (c) evaluation group, comprising normally a specialist officer, a Procurement officer and a finance representative. For services having a likely annual expenditure exceeding £1,000,000, a Non-Executive Director should be a member of the evaluation team.
- 10.9.2 All groups should work independently of each other but individual Officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
- 10.9.3 The evaluation group shall make recommendations to the Group Board.
- 10.9.4 The Joint Chief Executive Officer shall nominate an Officer to oversee and manage the arrangement.

## **11 TENDERING FOR THE SUPPLY OF GOODS AND SERVICES**

### **11.1 Persons authorised to sign commercial offers and contracts**

- 11.1.1 The Joint Chief Executive Officer shall nominate Officers with power to make commercial offers and negotiate for the provision of services with commissioners.
- 11.1.2 Signing of commercial offers and contracts (legally binding commitments) are limited to the persons with the authority to sign for the Trust.

### **11.2 Requirement to make commercial offers**

- 11.2.1 The Joint Chief Executive Officer, as the accounting officer, is responsible for ensuring that each Trust makes commercial offers which are duly approved and signed by an authorised signatory prior to submission to the commissioner. In discharging this responsibility, the Joint Chief Executive Officer should take into account:
  - (a) the needs of the commissioner and service users upon whose behalf the service is being provided;
  - (b) the scope of work for the services to be delivered expressed through a clear service specification;
  - (c) the relevant NICE guidelines and national service framework (if any);
  - (d) the standards of service quality expected;
  - (e) the relevant Trust policies for the delivery of services

- (f) any risks to the Trust arising from the contract or delivery of services
  - (g) the cost of mobilising and providing the service and the pricing of such services to the commissioner including any risk mitigation costs and contingency
  - (h) the ability of contracts to return a surplus to the Trust;
  - (i) the terms and conditions under which the service will be delivered.
- 11.2.2 Pricing for goods and services must be approved by the Joint Chief Finance Officer as set out in 6.2 prior to the submission of a commercial offer.
- 11.2.3 All commercial offers must include:
- (a) A clear scope of work, preferably the service specification;
  - (b) The pricing for the service, identifying where VAT is applicable;
  - (c) The terms and conditions under which the service will be offered;
  - (d) Clauses to protect the intellectual property and commercial confidentiality of information; and
  - (e) Limit for the validity period of the offer.

### **11.3 Requirement to enter into contracts for all goods and services**

- 11.3.1 The Joint Chief Executive Officer is responsible for ensuring the Trust enters into suitable legal contracts with service commissioners for the provision of services.
- 11.3.2 The Joint Chief Executive Officer will ensure that all contracts are reviewed on a periodic basis and no less than every three years.
- 11.3.3 With the exception of national variations mandated by NHS England, all contract change requests will be treated as if new contracts including the requirement to make a commercial offer, approval of pricing in accordance with 6.2 and, power to sign commercial offers and contracts.
- 11.3.4 The Joint Chief Executive Officer will need to ensure that regular reports are provided to the Group Board detailing actual and forecast income from contracts for NHS healthcare and delegated social service functions.

### **11.4 Provision of goods and services to individuals**

- 11.4.1 The Joint Chief Executive Officer will ensure that each Trust publishes and makes available the standard terms and conditions for the provision of

services to individuals. Such terms and conditions to cover as a minimum both Private Patients and Overseas Visitors.

## **12 INTELLECTUAL PROPERTY**

The Joint Chief Executive Officer will need to ensure that all intellectual property is identified, protected and used for the benefit of each Trust, the NHS and service users. Such intellectual property shall consist of creations of the Trust for which it holds exclusive rights which includes, but is not limited to, trade secrets, publications, trademarks, designs and patents.

### **12.1 Identify and protect all intellectual property and trade secrets**

- 12.1.1 The Joint Chief Executive Officer will ensure that all intellectual property is identified and properly recorded in the Trust's Intellectual Property register.
- 12.1.2 The Joint Chief Executive Officer will ensure that all third-party Intellectual Property, upon which each Trust's Intellectual Property relies and is recorded in the register, is properly licensed from the third party for the intended usage and confers rights to sub-license as part of each Trust's Intellectual Property.
- 12.1.3 All staff are required to identify and protect the intellectual property of each Trust and ensure that is properly recorded in the Trust's Intellectual Property register.
- 12.1.4 The Joint Chief Executive Officer will ensure that a Non-Disclosure Agreement is signed with any third party before disclosure or receipt of confidential information with the third party.
- 12.1.5 The Joint Chief Executive Officer will ensure that all contracts of employment include conditions under which confidentiality of the Trust and third-party information should be maintained as part of the staff conditions of employment.
- 12.1.6 All documents containing commercially sensitive information must be marked 'Commercial in confidence.'
- 12.1.7 The Joint Chief Executive Officer will ensure that all publications produced by the Trust are marked as Trust copyright. This will include, amongst other items, research reports, manuals and policy documents.

### **12.2 Registering of trademarks and patents**

- 12.2.1 The Joint Chief Executive Officer will identify trademarks and patents of specific value to the Trust and wider NHS and ensure that it is appropriately registered with the relevant authorities.

## **12.3 Licensing of Intellectual Property**

- 12.3.1 The Joint Chief Executive Officer is responsible for ensuring that each Trust licenses Intellectual Property to protect the property and reputation of the Trust from misuse, and to derive benefit for the Trust, NHS and service users.
- 12.3.2 All uses of the Trust's intellectual property by a third party must be licensed, whether there is a fee for usage or not. The license should take into account:
- (a) The scope of usage of Intellectual Property, including territories where the Intellectual Property may be used and the uses to which it may be put.
  - (b) Conditions of usage setting out how the Intellectual Property may, or may not be used, both to protect the property's value and the reputation of the Trust and the Group.
  - (c) The term of the license, including any conditions by which the Trust may terminate the license, including misuse.
  - (d) The benefit accruing to the Trust from the licensee's use of the Intellectual Property. This may include a financial benefit, or where no financial benefit is requested, may include promotion of the Trust, sharing of information, or other non-financial benefit which is to the benefit of the Trust, the Group, the NHS or service users.
- 12.3.3 The Joint Chief Executive Officer is responsible for ensuring that the Trust enters into legal agreements with third parties where there is joint ownership of Intellectual Property.
- 12.3.4 The Joint Chief Executive Officer is responsible for entering into agreements to share Intellectual Property between the Trust and the staff who created the Intellectual Property. In making such agreements the Trust should take into account:
- (a) The Trust's ability to use the Intellectual Property should not be limited;
  - (b) Staff members will have no ability to sub-license the Intellectual Property;
  - (c) The benefits from usage or licensing of the Intellectual Property may be distributed to all parties of the agreement, including staff.

## **13 CAPITAL INVESTMENT, FIXED ASSET REGISTERS AND SECURITY OF ASSETS**

### **13.1 CAPITAL INVESTMENT**

- 13.1.1 Prior to the start of the financial year, the Joint Chief Finance Officer will, on behalf of the Joint Chief Executive, prepare and submit a capital plan for approval by the Board.
- 13.1.2 The Joint Chief Finance Officer, on behalf of the Joint Chief Executive Officer:
- (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; and
  - (c) shall ensure that the capital investment is not undertaken without confirmation of commissioner(s) written support, where appropriate, and the availability of resources to finance all revenue consequences, including capital charges.
- 13.1.3 Each Trust will follow NHS England's Cash and Capital Regime and, where applicable, approval will be sought for any investment and property business cases in line with the requirements of the guidance.
- 13.1.4 Each Trust will follow NHS England capital regime in relation to system sign off and working within CDEL limits set by the DHSC.
- 13.1.5 Each Trust will ensure all capital schemes align with the capital allocations provided within the Integrated Care System (ICS), ensuring that investments are coordinated and support broader system objectives.
- 13.1.6 For capital schemes where the contracts stipulate stage payments, the Joint Chief Executive Officer will issue procedures for their management incorporating the recommendations of any applicable Health Building Notes.
- 13.1.7 The Joint Chief Finance Officer shall assess on an annual basis the requirement for the operation of the construction industry tax deduction scheme in accordance with HMRC guidance.
- 13.1.8 The Joint Chief Finance Officer shall issue procedures for the regular reporting of expenditure and commitment against authorised expenditure.
- 13.1.9 The approval of a capital programme shall not constitute approval for the initiation of expenditure on any scheme.
- 13.1.10 The Joint Chief Finance Officer may, via the Scheme of Delegation, issue to the manager responsible for any scheme:

- (a) specific authority to commit expenditure;
- (b) authority to proceed to tender; and
- (c) approval to accept a successful tender.

The Joint Chief Executive Officer will issue a Scheme of Delegation for capital investment management in accordance with applicable Health Building Notes guidance and these Standing Financial Instructions.

- 13.1.11 The Joint Chief Finance Officer 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 the Scheme of Delegation.

## 13.2 ASSET REGISTERS

- 13.2.1 The Joint Chief Finance Officer is responsible for the maintenance of registers of assets, taking account of the requirements of NHS England, 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.
- 13.2.2 Each Trust shall maintain an asset register recording fixed assets. The minimum data set to be held within these registers shall be as specified in the *DHSC Group Accounting Manual*.
- 13.2.3 Additions to the fixed asset register must be clearly identified to a specific scheme, which in turn will have an identified and appropriate Budget Holder / project manager 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; and
  - (c) lease agreements in respect of assets held under a finance lease and capitalised.
- 13.2.4 The Trust must not dispose of any assets where the disposal of the assets would materially prejudice the Trust's ability to meet its obligations to provide Commissioner Requested Services in accordance with its NHS Provider Licence.
- 13.2.5 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). It is the responsibility of the appropriate Budget Holder to inform the Joint Chief Finance Officer that an asset is to be disposed of.

- 13.2.6 The Joint Chief Finance Officer shall approve procedures for reconciling balances on fixed assets accounts in ledgers against balances on fixed asset registers.
- 13.2.7 The value of each asset shall be indexed to current values in accordance with methods specified in each Trust's Accounting policies.
- 13.2.8 The value of each asset shall be depreciated using methods and rates as specified in the Trust's Depreciation Policy.
- 13.2.9 The Joint Chief Finance Officer shall calculate and pay capital charges as specified in the *DHSC Group Accounting Manual*.

### **13.3 SECURITY OF ASSETS**

- 13.3.1 The overall control of fixed assets is the responsibility of the Joint Chief Executive Officer.
- 13.3.2 Asset control procedures (including fixed assets, cash, cheques and negotiable instruments, and also including donated assets) must be approved by the Joint Chief Finance Officer. This procedure shall make provision for:
  - (a) recording managerial responsibility for each asset;
  - (b) identification of additions, disposals and replacements;
  - (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; and
  - (g) reporting, recording and safekeeping of fixed assets, cash, cheques, and negotiable instruments.
- 13.3.3 All discrepancies revealed by verification of physical assets to fixed asset register shall be notified to the Joint Chief Finance Officer.

- 13.3.4 Whilst each member of staff has a responsibility for the security of property of the Trust, it is the responsibility of members of the Group Board and senior staff in all disciplines to apply such appropriate routine security practices in relation to NHS property as may be determined by the Group Board. Any breach of agreed security practices must be reported in accordance with these Instructions.
- 13.3.5 Any damage to the Trust's premises, vehicles and equipment, or any loss of equipment, stores or supplies must be reported by members of the Group Board and staff in accordance with the procedure for reporting losses.
- 13.3.6 Where practical, assets should be marked as Trust property.

## **14 STORES, LOCAL STOCK CUPBOARDS AND RECEIPT OF GOODS**

- 14.1 Stores, defined in terms of controlled stores, distribution centres and departmental stores (for immediate use), should be:
  - 14.1.1 kept to a minimum; and
  - 14.1.2 valued at the lower of cost and net realisable value.
- 14.2 Subject to the responsibility of the Joint Chief Finance Officer for the systems of control, overall responsibility for the control of stores shall be delegated to a member of staff by the Joint Chief Executive Officer. The control of any pharmaceutical stocks shall be the responsibility of a designated Pharmaceutical Officer; the control of any fuel oil that of a designated Estates Manager.
- 14.3 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. Wherever practicable, stocks should be marked as Trust property.
- 14.4 The Joint Chief Finance Officer shall set out procedures and systems to regulate the stores including records for receipt of goods, issues, and returns to stores, and losses.
- 14.5 Stocktaking arrangements shall be agreed with the Joint Chief Finance Officer and there shall be a physical check covering all items in store at least once a year.
- 14.6 Where a complete system of stores control is not justified, alternative arrangements shall require the approval of the Joint Chief Finance Officer.
- 14.7 The designated manager/Pharmaceutical Officer shall be responsible for a system approved by the Joint Chief Finance Officer for a review of slow moving and obsolete items and for condemnation, disposal, and replacement of all unserviceable articles. The designated manager shall report to the Joint Chief Finance Officer any evidence of significant overstocking and of any negligence or malpractice (see also 14, 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.

- 14.8 Each Trust will follow any guidance issued by NHS England in relation to any centrally procured goods.

## **15 DISPOSALS AND CONDEMNATIONS, LOSSES AND SPECIAL PAYMENTS**

### **15.1 DISPOSALS AND CONDEMNATIONS OF NON-FIXED ASSETS**

- 15.1.1 The Joint Chief Finance Officer must prepare detailed procedures for the disposal of assets including condemnations and ensure that these are notified to managers.
- 15.1.2 When it is decided to dispose of a Trust asset, the head of department or authorised deputy will determine and advise the Joint Chief Finance Officer (via Procurement and Financial Services) of the estimated market value of the item, taking account of professional advice where appropriate.
- 15.1.3 All unserviceable articles shall be:
- (a) condemned or otherwise disposed of by an employee authorised (vis Procurement and Financial Services) for that purpose by the Joint Chief Finance Officer;
  - (b) recorded by the Condemning Officer in a form approved by the Joint Chief Finance Officer (SD12), 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 Joint Chief Finance Officer.
- 15.1.4 The Condemning Officer shall satisfy themselves as to whether or not there is evidence of negligence in use and shall report any such evidence to the Joint Chief Finance Officer who will take the appropriate action.

### **15.2 LOSSES AND SPECIAL PAYMENTS**

- 15.2.1 The Joint Chief Finance Officer must prepare procedural instructions on the recording of and accounting for condemnations, losses, and special payments, and must report to the Audit Committee on an annual basis, with additional reports provided on a quarterly basis by exception or as required. All staff must comply with the Trust's Losses and Special payments policy, and breaches of this policy will be viewed as breaches of the SFIs. If in doubt, the Finance Department must be consulted about how to apply this procedure.
- 15.2.2 Any member of staff discovering or suspecting a loss of any kind must immediately inform their head of department, who must immediately

inform the Finance Department. The Finance Department will assess the situation and if appropriate, inform the Joint Chief Finance Officer and/or Joint Chief Executive Officer. Where a criminal offence is suspected, the Joint Chief Finance Officer must immediately inform the LSMS and/or the police if theft or arson is involved. In cases of fraud and corruption or of anomalies, which may indicate fraud, or corruption, the Joint Chief Finance Officer must inform the LCFS and the NHS Counter Fraud Authority.

- 15.2.3 The Joint Chief Finance Officer should immediately notify significant losses to the Audit Committee.
- 15.2.4 The LCFS must notify the NHS CFA of all losses to fraud via the CFA's specific case management system. The Joint Chief Finance Officer, Audit Committee, and the External Auditor must also be notified of all suspected frauds regardless of value.
- 15.2.5 For losses apparently caused by theft, arson, neglect of duty or gross carelessness, the Joint Chief Finance Officer must immediately notify:
  - (a) The Group Board;
  - (b) the LSMS; and
  - (c) the External Auditor.
- 15.2.6 Within limits set by the Joint Chief Finance Officer along with their director reports within the Finance Department shall approve the writing-off of losses. The Audit Committee must approve any changes to these limits.
- 15.2.7 The Joint Chief Finance Officer shall be authorised to take any necessary steps to safeguard each Trust's interests in bankruptcies and company liquidations.
- 15.2.8 For any loss, the Joint Chief Finance Officer should consider whether any insurance claim could be made.
- 15.2.9 The Joint Chief Finance Officer shall maintain a Losses and Special Payments Register in which write-off action is recorded and reported to the Audit Committee.
- 15.2.10 No special payments exceeding delegated limits shall be made without the prior approval of the Group Board.

## 16 INFORMATION TECHNOLOGY

- 16.1 Acting on behalf of the Joint Chief Finance Officer, the Joint Chief Information Officer is responsible for the accuracy and security of the computerised financial data of each Trust and shall either directly or via the contract lead:
- 16.1.1 devise and implement any necessary procedures to ensure adequate protection of the Trust's data, programs and computer hardware for which he/she is responsible from accidental or intentional disclosure to unauthorised persons, deletion or modification, theft or damage, having due regard for the Data Protection Act 2018 and UK GDPR;
  - 16.1.2 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;
  - 16.1.3 ensure that adequate controls exist such that the computer operation is separated from development, maintenance and amendment including data security measures, disaster recovery and back-up arrangements; and
  - 16.1.4 ensure that an adequate management (audit) trail exists through the computerised system and that such computer audit reviews as he/she may consider necessary are being carried out.
- 16.2 The Joint Chief Finance Officer shall satisfy themselves 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.
- 16.3 In the case of computer systems which are proposed General Applications (i.e. including those applications which the majority of NHS bodies in the local health economy wish to sponsor jointly) all responsible Directors and staff will send to the Joint Chief Finance Officer:
- 16.3.1 details of the outline design of the system; and
  - 16.3.2 in the case of packages acquired either from a commercial organisation, from the NHS, or from another public sector organisation, the operational requirement.
- 16.4 The Joint Chief Finance Officer 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.

- 16.5 Where another health organisation or any other agency provides a computer service for financial applications, the Joint Chief Finance Officer shall periodically seek assurances that adequate controls are in operation.
- 16.6 Where computer systems have an impact on corporate financial systems the Joint Chief Finance Officer shall satisfy themselves that:
- 16.6.1 systems acquisition, development and maintenance are in line with financial requirements;
  - 16.6.2 data assembled for processing by financial systems is adequate, accurate, complete and timely, and that a management (audit) trail exists;
  - 16.6.3 only appropriate persons shall have access to such data;
  - 16.6.4 such computer audit reviews are being carried out as are considered necessary; and
  - 16.6.5 adequate business continuity/disaster recovery arrangements are in place
- 16.7 The Joint Chief Finance Officer shall ensure that financial risks to each Trust arising from the use of IM&T are effectively identified and considered and appropriate action taken to mitigate or control risk.
- 16.8 Competitive tenders will be sought at least every 5 years for each Trust's IM&T services or in accordance with the expiry of the relevant contract term. The results of the tendering exercise shall be reported to the Group Board.

## **17 PATIENTS' PROPERTY**

- 17.1 Each 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 Trust property.
- 17.2 The Joint Chief Executive Officer is responsible for ensuring that patients or their guardians, as appropriate, are informed before or at admission by:
- 17.2.1 notices and information booklets;
  - 17.2.2 Trust admission documentation and property records; and
  - 17.2.3 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 Trust premises, unless it is handed in for safe custody and a copy of an official patients' property record is obtained as a receipt.

- 17.3 The Joint Chief Finance Officer, delegated to the relevant teams, 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.
- 17.4 Where Department of Health and Social Care instructions require the opening of separate accounts for patients' monies, these shall be opened and operated under arrangements agreed by the Joint Chief Finance Officer.
- 17.5 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.
- 17.6 Where the total value of property is £5,000 or less, forms of indemnity shall be obtained. 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.
- 17.7 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.

## **18 ACCEPTANCE OF GIFTS AND HOSPITALITY BY STAFF (INCLUDING CASH)**

- 18.1 The Director of Corporate Affairs (on behalf of the Joint Chief Executive Officer) shall ensure that all staff are made aware of the Trust's policy on acceptance of gifts and other benefits in kind by staff (Managing Conflicts of Interest policy). This policy follows the guidance contained in NHS England's *Managing Conflicts of Interest in the NHS: Guidance for staff and organisations*. It is the responsibility of staff to ensure that the Trust's policy is followed on all occasions.
- 18.2 Staff should make themselves aware of, and comply with, the Bribery Act 2010, Code of Conduct for NHS Managers 2002, and the Code of Practice for the Pharmaceutical Industry 2012 relating to hospitality/gifts from pharmaceutical/external industry.
- 18.3 An annual declarations of interest exercise will be undertaken which is mandatory for all staff who receive a request for information.
- 20.4 All staff should be aware that disciplinary action can be taken in cases where an employee fails to declare a relevant interest, or is found to have abused their official position, or knowledge, for the purposes of self-benefit, or that of family and/or friends. Disciplinary action may lead to dismissal.

## **19 CHARITABLE FUNDS**

### **19.1 GENERAL**

- 19.1.1 The Trust has a responsibility as a Corporate Trustee for the management of funds it holds on trust. The management processes may overlap with those of the organisation of the Trust, the trustee responsibilities must be discharged separately and full recognition given to its dual accountabilities to the Charity Commission.
- 19.1.2 The reserved powers of the Board and the Scheme of Delegation make clear how decisions where discretion must be exercised are to be taken and by whom.
- 19.1.3 As management processes overlap most of the sections, these Standing Financial Instructions will apply to the management of funds held on trust.
- 19.1.4 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.
- 19.1.5 Charitable Funds are those gifts, donations and endowments made under the relevant charities legislation and held on trust for purposes relating to the Trust and the objectives of which are for the benefit of the NHS in England.
- 19.1.6 The Joint Chief Finance Officer shall maintain such accounts and records as may be necessary to record and protect all transactions and funds of the Trust as trustees of non-exchequer funds, including an Investment Register.
- 19.1.7 The Director of Corporate Affairs shall be responsible for the day-to-day management and operation of the charity.

### **19.2 INCOME**

- 19.2.1 All gifts accepted shall be received and held in the name of the Charity and administered in accordance with the Charity's policy, subject to the terms of specific funds. As the Charity can accept gifts only for all or any purposes relating to the NHS, officers shall, in cases of doubt, consult the Joint Chief Finance Officer before accepting any gift. Advice to the Corporate Trustee on the financial implications of fund-raising activities by outside bodies or organisations shall be given by the Joint Chief Finance Officer.
- 19.2.2 All gifts, donations and proceeds of fund-raising activities, which are intended for the Charity's use, must be handed immediately to Charitable Funds office to be banked directly to the Charitable Funds Bank Account.

- 19.2.3 In respect of donations, the Joint Chief Finance Officer alongside the Director of Corporate Affairs shall provide guidelines to officers of the Trust as to how to proceed when offered funds. These will include:
- a) the identification of the donor's intentions;
  - b) where possible, the avoidance of creating excessive numbers of funds;
  - c) the avoidance of impossible, undesirable or administratively difficult objects;
  - d) sources of immediate further advice; and
  - e) treatment of offers for personal gifts; and b. provide secure and appropriate receipting arrangements, which will indicate that donations have been accepted directly into the appropriate fund and that the donor's intentions have been noted and accepted.
- 19.2.4 In respect of Legacies and Bequests, the Joint Chief Finance Officer shall be kept informed of and record all enquiries regarding legacies and bequests.
- 19.2.5 In respect of fund raising, the final approval for major appeals will be given by the Board as Corporate Trustee. Joint Chief Finance Officer along with the Director of Corporate Affairs shall:
- a) advise on the financial implications of any proposal for fund raising activities;
  - b) deal with all arrangements for fund raising by and / or on behalf of the Charity and ensure compliance with all statutes and regulations;
  - c) be empowered to liaise with other organisations / persons raising funds for the Charity and provide them with an adequate discharge;
  - d) be responsible for alerting the Charitable Funds Committee and the Board to any irregularities, including theft regarding the use of the Charity's name or its registration numbers; and
  - e) be responsible for the appropriate treatment of all funds received from this source.
- 19.2.6 In respect of Trading Income the Joint Chief Finance Officer along with the Director of Corporate Affairs shall:
- a) be primarily responsible, along with designated fundholders, for any trading undertaken by the Charity; and

- b) be primarily responsible for the appropriate treatment of all funds received from this source.

19.2.7 In respect of Investment Income, the Joint Chief Finance Officer shall be responsible for the appropriate treatment of all dividends, interest and other receipts from this source.

### **19.3 INVESTMENT MANAGEMENT**

19.3.1 The Corporate Trustee shall be responsible for all aspects of the management of the investment of charitable funds as delegated under the terms of the approved investment policy. The issues on which the Joint Chief Finance Officer shall be required to provide advice to the Charitable Funds Committee shall include:

- a) the formulation of investment policy which meets statutory requirements (Trustee Investment Act 1961) with regard to income generation and the enhancement of capital value;
- b) the appointment of advisors, brokers and where appropriate, investment fund managers;
- c) pooling of investment resources and the preparation of a submission to the Charity Commission for them to make a scheme;
- d) the participation by the Charity in common investment funds and the agreement of terms of entry and withdrawal from such funds;
- e) that the use of assets shall be appropriately authorised in writing and charges raised within policy guidelines;
- f) the review of the performance of brokers and fund managers; and
- g) the reporting of investment performance.

19.3.2 The Joint Chief Finance Officer shall prepare detailed procedural instructions concerning the receiving, recording investment and accounting for Charitable Funds.

### **19.4 EXPENDITURE FROM CHARITABLE FUNDS**

19.4.1 The Board of the Corporate Trustee has delegated limits for the approval of expenditure. In the first instance it is the responsibility of the fund-holder to ensure that all commitments against a charitable fund represent the best available value for money in terms of direct patient benefit, and are consistent with 'appropriate charitable purposes' as defined by:

- a) the fund's objectives; and

- b) the definition of 'charitable purposes' as agreed by the Department of Health and Social Care with the Charity Commission.
- 19.4.2 All charitable expenditure is subject to approval in line with the Charitable Funds Expenditure Guidance policy with the exception of staff salaries and finance recharges which require Charitable Funds Committee approval.
- 19.4.3 Charitable capital expenditure must follow the same approval process as the Trust funded capital expenditure.
- 19.4.4 Under no circumstance shall a fund be allowed to go 'overdrawn'.

## **19.5 ASSET MANAGEMENT**

- 19.5.1 Assets in the ownership of or used by the Trust, shall be maintained along with the general estate and inventory of assets of the Trust. The Joint Chief Finance Officer shall ensure:
  - a) that appropriate records of all donated assets owned by the Trust are maintained and that all assets, at agreed valuations are brought to account;
  - b) that appropriate measures are taken to protect and / or to replace assets. These to include decisions regarding insurance, inventory control and the reporting of losses;
  - c) that donated assets received on Trust shall be accounted for appropriately; and
  - d) that all assets acquired from Charitable Funds which are intended to be retained within the funds are appropriately accounted for.

## **19.6 REPORTING**

- 19.6.1 The Joint Chief Finance Officer shall:
  - a) ensure that regular reports are made to the Charitable Funds Committee with regard to, inter alia, plans / targets, fund balances, investments and reserves, fundraising, income and expenditure, and performance against plans / targets;
  - b) maintain such accounts and records as may be necessary to record and protect all transactions and funds of the Charity;
  - c) prepare an Annual Report and Accounts in the required manner, which shall be submitted to the Charitable Funds Committee within agreed timescales;

- d) ensure an independent examination is undertaken annually; and
- e) ensure relevant annual submissions are made to the Charity Commission.

## **20 RETENTION OF DOCUMENTS**

- 20.1 The Joint Chief Executive Officer shall be responsible for maintaining a policy and procedure for the retention, preservation and destruction of records which all staff must follow.
- 20.2 The documents held in archives shall be capable of retrieval by authorised persons.
- 20.3 Documents held in accordance with national and legal guidelines shall only be destroyed at the express instigation of the Joint Chief Executive Officer, records shall be maintained of documents so destroyed in accordance with the policy and procedure for the retention, preservation and destruction of records.

## 21 RISK MANAGEMENT AND INSURANCE

- 21.1 The Joint Chief Executive Officer shall ensure that each Trust has a programme of risk management, which must be approved and monitored by the Group Board.
- 21.2 The programme of risk management shall include:
- 21.2.1 a process for identifying and quantifying risks and potential liabilities;
  - 21.2.2 the maintenance of a comprehensive risk register and assurance framework;
  - 21.2.3 engendering among all levels of staff a positive attitude towards the control of risk;
  - 21.2.4 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;
  - 21.2.5 reports to the Group Board on significant risks and progress against action plans to address those risks;
  - 21.2.6 reports to the Group Board on the Assurance Framework and progress on action plans to address gaps in control and/or assurance as prioritised by the Group Board;
  - 21.2.7 contingency plans to offset the impact of adverse events;
  - 21.2.8 audit arrangements including; internal audit, clinical audit, health and safety review;
  - 21.2.9 decision on which risks shall be insured; and
  - 21.2.10 arrangements to review the risk management programme.

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 within the Annual Report and Accounts as required by NHS England guidance.

- 21.3 All staff have responsibility for ensuring that their own practice, and that of anyone whom they manage, reflects the principles outlined in the Risk Management Strategy.
- 21.4 The Group Board shall decide if each Trust will insure through the risk pooling schemes administered by NHS Resolution alone and/or self-insure for some or all of the risks covered by the risk pooling schemes. If the Group 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.

- 21.5 Where the Group Board decides to use the risk pooling schemes administered by NHS Resolution the Joint Chief Finance Officer shall ensure that the arrangements entered into are appropriate and complementary to the risk management programme. The Joint Chief Finance Officer shall ensure that documented procedures cover these arrangements.
- 21.6 Where the Group Board decides not to use the risk pooling schemes administered by NHS Resolution for one or other of the risks covered by the schemes, the Joint Chief Finance Officer shall ensure that the Group Board is informed of the nature and extent of the risks that are self-insured as a result of this decision. The Joint Chief Finance Officer 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.
- 21.7 All the risk-pooling schemes require members to make some contribution to the settlement of claims (the 'deductible'). The Joint Chief Finance Officer should ensure documented procedures also cover the management of claims and payments below the deductible in each case.

## **Annex 1 – TENDERING PROCEDURE**

This Annex provides detail of the tendering procedure. For more detailed information and guidance on tendering please consult with the Procurement Department and refer to the Procurement Policy available on the intranet.

### **1 Invitation to Tender**

- 1.1 Procurement Department advice must be sought when seeking to go out to tender.
- 1.2 All formal invitations to tender shall be advertised via the Trusts electronic E-Tendering portal. Where there are national framework providers facilitating tendering activity then those E-Tendering solutions may be utilised, but records will be maintained by the Trust. No tender will be considered for acceptance unless submitted as per instructions included with the advertised specification and in accordance with the type of procurement exercise.
- 1.3 All tendering carried out through the E-Tender system will be compliant with the Trust policies and procedures as set out in these SFIs.
- 1.4 The issue of all tender documentation will be undertaken by the Procurement Department electronically through a secure website with controlled access using secure login, authentication and viewing rules.
- 1.5 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.
- 1.6 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical 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 Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DHSC.
- 1.7 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS terms and conditions for the procurement of goods and non-clinical services as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

### **2 Receipt, Safe Custody and Record of Formal Tenders**

- 2.1 All tenders will be received into a secure electronic vault so that they cannot be accessed until an agreed opening date and time. The details of the persons opening the documents will be recorded in the audit trail together with the date and time of the document opening. All actions and communication by both Procurement staff and suppliers are recorded within the system audit reports.
- 2.2 The date and time of receipt of each tender is endorsed within the design of the eProcurement system audit functionality.
- 2.3 The Joint Chief Executive Officer shall designate an officer or officers, not from the originating department, to receive the electronic tenders on their behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening (typically the Head of Procurement and or the Head of Contracts or as so designated by the Joint Chief Executive Officer), and for the records maintained in accordance with Section 3.

### 3 Opening Formal Tenders

- 3.1 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 the designated officer/s as appropriate.
- 3.2 Every tender received shall be electronically stamped with the date of opening and by whom.

Each Tender will be open to all appropriate suppliers. A permanent record shall be maintained to show for each competitive tender procurement:

- 3.2.1 the names of and the number of firms from which tenders have been received;
- 3.2.2 the date and time the tenders were opened;
- 3.2.3 the total price(s) tendered;
- 3.2.4 the closing time and date;
- 3.2.5 in respect of works tenders, the amount of each tender received; and the persons present at the opening shall sign the record.

Where a permanent schedule is to be kept such record shall be kept:

- 3.2.6 on the file to which such matter relates; and
- 3.2.7 on a central register or registers kept up to date and available for inspection by all Directors and officers (such officers to include internal and external auditors) of the Trust. It shall be the responsibility of the Joint Chief Executive Officer to ensure that such a central register is kept and maintained. Full auditable records of all steps of the tendering exercise will be held as described herein and archived in the Trust's eProcurement system.

- 3.3 Except as in 3.7 below a permanent record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, the final price shown shall be recorded.
- 3.4 A report shall be made in the permanent record if on any tender price alterations are so numerous as to render the procedure at Section 3.6 unreasonable.

#### **4 Admissibility and Acceptance of Formal Tenders**

- 4.1 Tenders shall be accepted by such person(s) authorised by the Joint Chief Executive Officer dependent upon the nature of the contract.
- 4.2 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt, they shall consult the Joint Chief Executive Officer.
- 4.3 Tenders received after the due time and date may be considered only if the Joint Chief Executive Officer or nominated officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Joint Chief Executive Officer or nominated officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Group Board at its next meeting. The eProcurement system does not allow for the acceptance of tenders after the publicised closing date and time unless technical difficulties prevented the submission of tenders and documents. An extension allowing the submission of tenders due to technical difficulties will be announced to each bidder indicating the intent to bid.
- 4.4 Technically late tenders (i.e. those dispatched in good time but delayed through no fault of the tenderer) may at the discretion of the Joint Chief Executive Officer be regarded as having arrived in due time. (Please see 4.2)
- 4.5 During the consideration of a tender/quotation, an officer, or a duly authorised consultant, may communicate with a tenderer in writing via Procurement Service using the eProcurement system to elucidate any technical or contractual matters that are or may be relevant to the evaluation of his offer. The Trust shall not act upon such information provided by the tenderer until it has been confirmed unequivocally in writing by the tenderer.
- 4.6 While decisions as to the admissibility of late, incomplete, or amended or qualified tenders are under consideration and while re-tenders are being obtained, the tender documents shall be kept strictly confidential and held in safe custody by the nominated officer. (Refer to 4.2)
- 4.7 Where only one tender/quotation is received the Trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.

- 4.8 A tender other than the lowest (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason the Group Board decides otherwise and record that decision in their minutes.
- 4.9 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Joint Chief Executive Officer or nominated officer.
- 4.10 Where the function of contracting on behalf of the Trust is delegated or sub-contracted to any other person, body or organisation then such delegate or sub-contractor shall observe regulations the same or substantially the same as set out in this Annex.
- 4.11 Should the nominated officer decide that it is necessary to re-tender, the original tender document shall be kept confidential and held in safe custody. The full tender exercise and audit trail are held in the eProcurement system.
- 4.12 Until the acceptance of any tender, all the tender documents shall be held in safe custody by the Joint Chief Executive Officer, or an officer duly authorised by the Joint CEO in writing, or professional consultant employed by the Trust, and no-one shall disclose to any person other than a person authorised by the Trust any information acquired relating to any tender, unless authorised by the Joint Chief Executive Officer.
- 4.13 All Tenders should be treated as confidential and should be retained for inspection and held within the prevailing eProcurement and or Contracts Management system.

## **5 Lists of Contractors**

- 5.1 The Trust shall compile and maintain, and the Joint Chief Finance Officer shall keep, lists of approved firms and individuals with whom the Trust has chosen to enter into a contract.
- 5.2 Any supplier is free to participate in future requests for quotes and possible tenders (based on the form of the tendering exercise) by registering through the Trust's chosen eProcurement system and on the UK Governments Central Digital Platform.
- 5.3 Regular supplier reports and participation statistics are kept for each supplier within that system and can be reviewed periodically.
- 5.4 The Trust will ensure all suppliers are allowed equal opportunity to participate in requests for quotations and tenders as applicable to UK procurement guidelines and regulations.

## **6 Consultant Engagement**

- 6.1 Engagement of professional services (excluding design consultants)

- 6.1.1 The Joint Chief Executive Officer and Executive Directors may appoint professional or management consultants in accordance with this guidance, within their budgetary capability and in accordance with NHS England guidance on consultancy spending approval criteria.
- 6.1.2 If the consultants to be engaged are each Trust's current External Auditors, approval of the Audit Committee must be sought before the appointment is confirmed.
- 6.2 Competitive Tendering/Quotation Requirements
- 6.2.1 Professional services estimated not to exceed £25,000:
- The relevant engaging officer must ensure that competitive quotations in writing are obtained and that they are fair and reasonable. The process will be conducted by Procurement Services via the eProcurement system whether an advertisement or a mini- competition utilising a Framework.
- 6.2.2 Professional services estimated to cost in excess of £10,000:
- There shall be a minimum of three competitive tenders. Opening tenders to be in accordance with Annex Section 3.
- 6.2.3 Notwithstanding conditions in 6.2.1 above, the relevant engaging officer may decide that tenders shall be invited for the provision of professional services with an estimated value of up to £10,000.
- 6.2.4 The decision to waive tendering procedures in excess of £10,000 shall be in accordance with SO 9.5 but must be made by the relevant engaging officer and a permanent record must be retained specifying the reasons for doing so.
- 6.3 The Process of Engagement
- 6.3.1 As a minimum requirement, for each appointment the relevant engaging officer must ensure:
- (a) that an explicit statement is made as to why external services are needed, together with details of the method of engagement;
  - (b) a Project Officer is designated, who will be the main contact with the contractors and effectively manage the day-to-day aspects of the assignment for each Trust;
- 6.3.2 that the Terms of Reference are laid out for the engagement, to which should be appended the basis for charging and a timetable for completion of the assignment.

6.3.3 In addition to the procedures for engaging professional services set out above, the following authorisation is required for contracts for the employment of management consultants:

<b>Costs of service</b>	<b>Authorisation by</b>	<b>To be notified to</b>
Up to £25,000	Any from: Joint Chief Executive Officer or Executive Directors.	Joint Chief Executive Officer via information note.
£25,000 – £100,000	Joint Chief Executive Officer	Executive Directors via information note.

#### 6.4 Register of "Management Consultants"

6.4.1 A register of all Management Consultant appointments will be kept and will be available to Directors. Officers authorising the appointment of Management Consultants must ensure that information is maintained in a Trust register, giving:

- (a) relevant engaging officer responsible;
- (b) project officer;
- (c) method of appointment;
- (d) expected cost;
- (e) date work to begin;
- (f) date work to finish;
- (g) terms of reference to be appended;
- (h) followed by further notification of;
- (i) date work finished; and
- (j) final cost.

#### 6.5 Definition of "Management Consultant"

6.5.1 The following categories of persons and companies are deemed not to be Management Consultants in the context of this guidance:-

- (a) Agency staff - staff employed on an individual basis to cover temporarily vacant substantive posts; and

7 Design consultants - firms employed by the Chief Finance Officer and for which the level of fees and terms of commission are constrained by Departmental Guidelines.

## Annex 2 – MATRIX OF FINANCIAL LIMITS

This document summarises the financial limits delegated by the Board and the Chief Executive to Trust employees

*This document lists a selection of delegated privileges and therefore does not seek to outline the often-extensive duties and responsibilities (such as good record-keeping and adherence to local procedures) which are associated with these privileges*

DELEGATED MATTER	DELEGATED AUTHORITY / FINANCIAL LIMITS						
	Level 8	Level 7	Level 6	Level 5	Level 4	Level 3	Level 2
	Board or Committee	CEO / COO / CFO or Deputy CEO	All 'very senior manager' Directors (EDs or otherwise) or Deputy CFO	Divisional Directors Divisional Medical Leads Senior Corporate Managers	Directorate Managers Assistant Managers (Corporate)	Department Managers Matrons	Deputy Department Managers Ward Managers
	<p>In case of staff absence, authority may pass sideways (subject to cost centre restrictions) or upwards (meaning that a higher-level manager must approve).            In cases of Executive Director absence, authority may occasionally pass downwards to nominated deputies in line with current policies / procedures.            Trust staff should only attempt to sign documents / approve activity in cases where they have the requisite authority to do so.  <b>Except for Section 2, all limits are inclusive of VAT, wherever VAT is charged, even if presumed recoverable.</b></p>						
1. Requisitioning of all goods, works and services	<p>All Trust employees with Oracle system access can input a requisition for goods/services. Pharmacy employees with JAC system access can input a requisition for drugs and other medicines.            All goods/works/services (except under section 4, below) are procure via the completion of a requisition, and therefore the creation of a purchase order (PO).            This applies regardless of how the purchase is funded (e.g., Charity-funded items)</p>						
<b>Approval of revenue requisitions</b> Spend is restricted to approver's cost centres and must be within Board- approved budget and/or have an approved business case (section 3, below).		> Procurement threshold for goods / services	≤ Procurement threshold for goods / services	≤ £25,000	≤ £10,000	≤ £5,000	≤ £1,000
<b>Approval of capital requisitions</b> Spend must be listed in Board-approved annual capital programme, and/or have an approved business case (section 3, below).		CFO > Procurement threshold		Financial Services ≤ £25,000			
<b>Approval of annual call-off requisitions</b> - contracted spend only.		> Procurement threshold					
<b>Approval for payment of consignment goods</b> Requisition approval may only be given where an item of consignment stock has been used. Replacement will be on a top-up basis only, and in accordance with stock levels pre-determined by Procurement.		> Procurement threshold					
<b>Drugs inventory and other Pharmacy purchasing</b> Limits relate to requisitions via the Pharmacy JAC system. Unlike for non-drugs purchasing via Oracle, these limits are not wholly built into the JAC system. High-value approvals are sought via email and filed for audit purposes.		> £100,000 CEO or CFO	≤ £100,000 Director of Pharmacy and Medicines Management / Deputy Director of Pharmacy	≤ £50,000 Pharmacy Support Services Operational Manager / Team Leader, Pharmacy Clinical Support Services	≤ £25,000 6 Pharmacy officers per a local signatory list		

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<b>2. Quotations, tendering and contract procedures</b>							
<b>2.1 Requirement to obtain quotations / tenders</b> Authorised personnel are specifically advised to consult Procurement at all stages during the process.  a. > Procurement threshold - full OJEU procedures apply b. > £50,000 plus VAT & ≤ Procurement threshold - competitive tenders c. > £10,000 + VAT & ≤ £50,000 + VAT - obtain 3 competitive written quotes d. ≤ £10,000 plus VAT - no requirement for competitive quotations		<b>Guidance:</b> <ul style="list-style-type: none"> <li>The financial limits here refer to the anticipated value of the contract over the contract period (normally 3 years). Compliance with tendering procedures described within the SFIs is always required, for any type of contract for goods, services or works. Requests for tenders or quotations must be accompanied by the appropriate set of NHS Standard Terms and Conditions of Contract.</li> <li>Spend must not be disaggregated to avoid the requirement to obtain competitive quotations or tenders.</li> <li>Whilst the need for competitive quotations only applies where the value of the contract is greater than £10,000 + VAT, all Trust employees must consult Procurement before proceeding.</li> <li>It is strongly recommended that competitive quotations are obtained, or a national or regional framework agreement is used to demonstrate best value for money (VfM).</li> </ul>					
<b>2.2 Authorisation of waivers</b> <i>Authorisation of any waiver of tenders or quotations</i> All waivers to be reported by the Director of Finance to each meeting of the Audit Committee. Waivers are authorised by CEO where tender pertains to CFO budgets.			CFO >£100k CEO >£50K ≤ £100k CFOCFO	≤ £50,000 Deputy CFOCFO			
<b>2.3 Opening of quotations</b> <i>A record of all quotations received must be kept by the requisitioning department and must be made available for audit purposes.</i>						Authority at this level or higher	
<b>2.4 Opening / verifying of electronic tenders</b> <i>All electronic tenders are recorded by Procurement.</i>				Board Secretary or Assistant Director of Finance - Procurement			
<b>2.5 Acceptance of late tenders</b> <i>Decision as to whether late tenders are to be accepted.</i>			CEO or CFO				
<b>2.6 Selection of the tender that is not the most economically advantageous tender (MEAT)</b>			CEO				
<b>2.7 Contract award</b> Authorised officers are specifically advised by Assistant Director of Finance - Procurement at all stages during the process.		Contract signatories are also as below. The CEO signs on behalf of the Board. Only the Director of Finance can sign credit agreements, with the exception of HR salary sacrifice arrangements.					
a. > £1,000,000	full OJEU procedures	Board					
b. ≤ £1,000,000	full OJEU		CEO				
c. ≤ £500,000	full OJEU		CEO / CFO				
d. > EU threshold & ≤ £250,000	full OJEU procedures			Deputy CFO			
e. > £30,000 & ≤ EU threshold	competitive tenders				Budget manager		
f. > £5,000 & ≤ £30,000	obtain 3 competitive written quotes				Budget manager, of a level higher than the opener (section 2.3)		

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<b>3. Business case approval</b>							
<b>3.1 Requirement for approved business case</b>  The business case process precedes the tendering / quotation procurement process, and is required for all capital expenditure, and for revenue spend which is not already <b>explicitly</b> within plan / budget.  The Trust's <i>Business case process pack</i> applies to 3.2 and 3.3.	<p><b>For capital or lease schemes</b>, the financial limits below refer to <b>whole-life, total implementation costs</b>, including external facilitation, lease costs, enabling works, VAT even if presumed recoverable, establishment changes and depreciation. This may exceed the capital expenditure total.</p> <p>Capital Bid Forms (CBFs) are used for smaller capital projects with low complexity, such as medical equipment up to a value of £50k which are not within Board approved programme. A short form business case is required for capital projects &gt;£50k but ≤ £250,000 and a full business case for projects &gt; £250k.</p> <p><b>For revenue investment schemes</b>, the financial limits below refer to the maximum revenue expenditure in any given year.</p> <p><b>For schemes with significant capital and revenue elements</b>, the value of each element (capital vs revenue) is assessed separately as described above.</p>						
	<p><b>Pre-approval of the following technical elements within business cases through Financial Services is required:</b></p> <p>VAT recovery / leases and rentals / 'managed service' models and 'free asset' models / collaboration - joint ventures, partnerships / capital expenditure and depreciation.</p>						
<b>3.2 Approval of revenue-only business cases</b>  Limits refer to additional spend budget required in any year, even if the scheme is self-funded, or 'invest to save'.	> £250,000 Board <sup>5</sup> ≤ £250,000 FBPC	≤ £50,000 CEO or CFO					
<b>3.3a Approval of capital or lease business cases within Board-approved capital programme</b>	> £1,000,000 Board <sup>5</sup> ≤ £1,000,000 FBPC	≤ £250,000 CEO or CFO					
<b>3.3b Approval of capital or lease business cases not within Board-approved capital programme.</b>	> £250,000 Board <sup>5</sup> ≤ £250,000 FBPC	≤ £50,000 CEO or CFO					
<p><b>Business cases / schemes need additional NHSE / DHSC approval</b> if 'significant transactions' and/or if the following costs exceed £15m: capital costs, or whole-life costs (for IT, lease or 'managed service' schemes).</p> <p><b>All significant leases</b> (annual rents exceeding £100,000) must be notified to Board, if not already Board-approved.</p>							
<b>3.4 Approval of any proposal or case involving management consultants</b>  'Consultancy fees' expenditure is subject to additional controls. All cases over £50k to be referred to Director of Finance in the first instance. It is recommended that a view is sought from the Procurement Department in the first instance.	> £50,000 Board NHSI approval required	< £50,000 CEO or CFO	≤ £10,000 ED				
<b>3.5 Charitable funds 'bids'</b>  Business cases are required for every item of charitable spend via Expenditure Request Form (ERF). Technical approval - all ERFs are assessed for compliance by Financial Services, prior to Procurement processes and/or forwarding for higher approval.	> £30,000 Charitable Funds Committee	≤ £30,000 Director of Finance		≤ £30,000 Fund-holders, if spend is against their delegated fund			

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<b>4. Non-Treasury payments which are not linked to requisitions / orders</b>							
<b>4.1 Payment approval for exceptional non-PO transactions as specified below</b> Certain taxation, pay, travel, compensation, credit card, reimbursement or ex-gratia payments (6.1) also may or should not have a requisition.	The Trust operates a 'no PO no pay' procedure for all purchasing other than items specifically listed below, and ex-gratia losses. Breaches, including retrospective ordering, will be addressed under the Trust's escalation procedure, and may result in disciplinary action.						
a. NHS BSA FP10s (prescriptions)			Director of Pharmacy and Medicines Management				
b. NHS BSA quarterly injury benefits and early retirement liability			Deputy CFO				
c. NHS Fleet Solutions - advance payment of salary sacrifice cars			CFO				
<b>4.2 Petty cash withdrawal approval</b> Petty cash is issued on presentation of a receipt, financial ledger code and completed proforma. Spend is restricted to cost centres allocated to the approving manager. Second approval may be requested if the first signatory is the beneficiary of the spend, and all travel and incidental expenses should either be requisitioned in advance of travel (e.g., tickets, accommodation) or be reimbursed via Payroll (e.g., mileage).		≤ £30 > £30 CFO	≤ £30 > £30 Deputy CFO	≤ £30	≤ £30	≤ £30	≤ £30
<b>4.3 Credit / payment cards</b> Approval for the issue of business-use credit cards to individuals. Maximum limit on each credit card is £7,500.		Authority					
<b>5. HR and pay</b>							
<b>5.1 Establishment and recruitment</b>	Delegated authority for establishment changes is detailed in the Scheme of Delegation (App 1).						
<b>5.2 Bank / agency staffing</b>	Delegated authority for approval of bank / agency staffing is detailed in the Scheme of Delegation (App 1).						
<b>5.3 Exit packages / severance approvals</b>							
a. Individual - directors / senior managers within the scope of the Committee	Remuneration and Appointments Committee						
b. Individual - with contractual entitlement		CEO or CFO					
c. Trust-wide - HM Treasury approved 'mutually agreed' schemes	Board						
d. Individual - exceeding contractual entitlement (per 6.1d)	Board HM Treasury approval required via NHSE						

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<b>6. Losses, special payments, disposals and litigation</b>							
<b>6.1 Registered losses and special payments</b>	All novel and contentious or repercussive cases must be reported to DHSC / NHSI via Financial Services regardless of value.						
a. <b>Debt write-offs</b> Limit applies at supplier level, not individual invoice level.	> £10,000 Audit Committee	≤ £10,000 CFO	≤ £1,000 Deputy CFO				
b. <b>Non-clinical negligence payments</b> made on the advice of NHSLR -excesses pertaining to employer liability (EL) and public liability (PL) cases ( <i>Liability to Third Parties</i> scheme). The limits refer to <u>net</u> payments.						< £10,000 excess (EL) < £3,000 excess (PL) Legal Services Manager	
c. <b>Extra-statutory and extra-regulatory payments</b>	Board						
d. <b>Severance payment exceeding contractual entitlement</b> (per 5.4d)	Board  HM Treasury approval required via NHSE						
e. <b>All other registered losses</b> Including losses of cash, salary overpayment write-offs, damage to or loss of Trust assets including stock write-offs, and ex-gratia payments.	Audit Committee notified	≤ £5,000 CFO ≤ £10,000 CEO > £10,000 CEO & CFO					
<b>6.2 Condemnation and disposal</b>	Under NO circumstances should any kit or equipment that has been involved in an accident / incident be disposed of until investigations have been concluded.						
a. Approval to condemn / dispose of capital or inventory asset All disposals must be performed in line with the <i>Condemning and Disposal of Scrap and Surplus Equipment</i> policy.		CFO, via SD12 form					
b. Condemning and disposal of non-capital, non-inventory supplies and equipment (such as office equipment).				Assistant Director of Finance - Procurement in conjunction with budget manager			
<b>6.3 Litigation claims</b>	NHSR EL and PL excess are listed under section 6.1						
a. Authorisation of clinical negligence (CNST) premium.		CFO					
b. Approval of payments following other legal advice that are patient-related, other than 6.1.b above.			> £10,000 Associate Medical Director			< £10,000 Legal Services Manager	
c. Approve proposals for action on litigation against, or on behalf of, the Trust.	> £100,000 Board		< £100,000 Director of Governance and Quality Improvement and list (determined by DoGQI)				

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	Level 8	Level 7	Level 6	Level 5	Level 4	Level 3	Level 2
	Board or Committee	CEO / COO / CFO or Deputy CEO	All 'very senior manager' Directors (EDs or otherwise) or Deputy CFO	Divisional Directors Divisional Medical Leads  Senior Corporate Managers	Directorate Managers  Assistant Managers (Corporate)	Department Managers  Matrons	Deputy Department Managers  Ward Managers
<b>7. Income</b>							
<b>7.1 Income contracts</b>	Values are the whole-life values of the contract.						
Signing contracts <i>Board to be consulted in advance for values above £1,000,000</i>		> £250,000 CEO or CFO	≤ £250,000 Deputy CFO				
<b>7.2 Setting of fees and charges</b>							
a. Reviewing and revising existing fees and charges annually	Notified to FBPC	CFO only					
b. Approving charges for new services	Notified to FBPC	CFO only					
<b>7.3 Non-trading income</b>							
Incomes (cash / non-cash) gifted to the Trust / Charity for no exchange (other than, say, for promotional or public benefit) should be discussed in the first instance with the Head of Fundraising, or the Trust's Research Department in the case of research and development ('clinical') grants. The Trust's <i>Managing Conflicts of Interest Policy</i> may apply.							
Approving fundraising activity, with divisional sign-off					Fundraising Manager		
Approving 'non-clinical' grant applications with divisional sign-off		> £50k CFO	≤ £50k Fundraising Manager				
Agreeing commercial sponsorship proposals		CEO or CFO					
<b>8. Gifts and hospitality</b>							
<b>8.1 Receiving gifts and / or hospitality, including 'thank-you' presents</b>	Please refer to the Trust's <i>Managing Conflicts of Interest Policy</i> for further details including how to declare gifts / hospitality. Cash gifts cannot be accepted; personal gifts to staff must not be accepted to charitable funds.						

## Notes

### Annual call-off order

A single purchase order placed with a supplier at the beginning of the year to cover all goods/services ordered from the supplier during that period. Commonly used where a large range of products are ordered very frequently, and where it would be uneconomical to place an order for each requirement e.g., provisions (foodstuffs).

### Consignment goods

These are goods provided to the Trust by a supplier and held in inventory (stock).

No payment is made to the supplier until the item is used and a requisition / order raised to replenish the used item.

Typically, this system is adopted for high-value medical devices such as orthopaedic implants where it would be prohibitively expensive for the Trust to purchase the full range of products/sizes that might be required, and there would be a high risk of obsolescence.

### Waiver

A waiver is an exemption from undertaking a competitive tendering or quotation exercise. Circumstances in which a request to waive SFIs are clearly defined in the Trust's SFIs.

### Procurement Thresholds from 1 January 2026

PROCUREMENT THRESHOLDS	
Goods and Services	£135,018
Works contracts	£5,193,000
Light Touch Regime	£663,540
Healthcare Services	Seek procurement guidance

## SCHEME OF RESERVATION AND DELEGATION

### WIRRAL COMMUNITY HEALTH AND CARE NHS FOUNDATION TRUST (Trust)

This Scheme of Reservation and Delegation (**Scheme**) is adopted by the Board of Wirral Community Health and Care NHS Foundation Trust (**Trust Board**) to sets out those decisions which are reserved for the Trust Board and those which may be delegated to the general purpose joint committee established by the Trust and Wirral University Teaching Hospital under sections 65Z5 and 65Z6 of the National Health Service Act 2006 (“**2006 Act**”) pursuant to a Partnership Agreement dated 10 February 2026. (“**PCA**”).

The Scheme is supplemental to, and must be read alongside, the Trust’s Constitution, the PCA, the Standing Orders for the Trust Board (**SO**) and standing financial instructions (**SFI**). Nothing in the Scheme permits the delegation or joint exercise of any statutory function that the Trust is prohibited from delegating.

Nothing in this Scheme affects any existing delegation from the Trust Board to its committees or to officers under the Trust’s Standing Orders and Standing Financial Instructions, save that where a function is delegated to the Group Board that function will, to the extent of the delegation, no longer be exercisable by a Trust Board committee or officer unless specifically authorised by the Group Board or by the Trust Board acting under a reserved power.

This Scheme takes effect on the date of approval by the Trust Board and will be reviewed annually.

<b>Matters Reserved to the Trust Board</b>
The Trust Board may determine any matter, for which it has delegated or statutory authority, it wishes in full session within its statutory powers.
Approval of the annual accounts, auditor’s report and annual report
Approval of amendments to the Constitution
Compliance with any capital expenditure limit imposed by NHS England

Approval of proposals to increase by 5 per cent or more the proportion of total income derived from non-NHS activity
Decisions to borrow money, invest money, form or acquire bodies corporate or give financial assistance
Decision to undertake a statutory transaction or a significant transaction (as defined in the Constitution)
Discharging the duty to ensure public and patient membership is representative
All functions relating to Trust Special Administration
Establishment of terms of reference, composition and reporting arrangements of the Audit Committee and Remuneration Committee
Approval of arrangements relating to the discharge of the Trust's responsibilities as a corporate trustee for funds held on trust, such as charitable funds including the requirements of sections 149 and 152 of the Charities Act 2011
Participation in domestic homicide reviews under the Domestic Violence, Crime and Victims Act 2004, Section 9(2), (3)
Decisions relating to collaboration agreements under section 1 of the Policing and Crime Act 2017
Authorisations under Part 3 of the Investigatory Powers Act 2016
Supply of nationality documents under section 20A of the Immigration Act 1999
Duties under the Network and Information Systems Regulations 2018
Notifications under s213B of the Housing Act 1996
Preparing and publishing objectives in accordance with reg 5(1) of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

Gender pay gap reporting under Schedule 1(2) of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017

Duties in relation to the supervision, management and use of controlled drugs under the Controlled Drugs (Supervision of Management and Use) Regulations 2013

Duties under section 23 of the Children and Families Act 2014

All functions under the Mental Health Act 1983, Mental Capacity Act 2005, Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008/1858 and the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008/1184

### **Matters Delegated to the Group Board**

The Group Board is a joint committee and may determine any matter, for which it has delegated authority, it wishes in full session within its delegation.

The Group Board is authorised to make binding decisions on Wirral Community Health and Care NHS Foundation Trust, and Wirral University Teaching Hospital NHS Foundation Trust.

Establish terms of reference and reporting arrangements of all sub-committees that are established by the Group Board.

Approval of a Group Governance Manual incorporating Standing Orders, a schedule of matters reserved to the Group Board and Standing Financial Instructions for the regulation of its proceedings and business.

Suspend, vary or amend any aspect of the Group Governance Manual.

Ratify any urgent decisions taken by the Chair and Chief Executive Officer in public session.

Approve a scheme of delegation of powers from the Group Board to its committees.

Require and receive the declaration of Group Board members' interests that may conflict with those of the Trusts and determining the extent to which that member may remain involved with the matter under consideration.

Adopt the organisation structures, processes and procedures to facilitate the discharge of business by the Trusts and to agree modifications thereto.

Receive reports from committees including those that the Trusts are required to establish and to take appropriate action on.

Confirm the recommendations of the Group Board committees where the committees do not have executive powers.

Establish terms of reference and reporting arrangements of all committees that are established by the Group Board.

Appoint and dissolve committees that are directly accountable to the Group Board.

Approve arrangements relating to the discharge of the Trusts' responsibilities as a bailer for patients' property.

Ratify or otherwise instances of failure to comply with Standing Orders brought to the Chief Executive Officer's attention.

Discipline members of the Group Board or employees who are in breach of statutory requirements or Standing Orders.

Authorise the use of the Trust Seal.

Approve the appointment and dismissal of both the internal auditors.

Entry into arrangements for the joint exercise of any of the Trust's functions with another person or body

Making, operating and varying joint working and delegation arrangements with other relevant bodies, local authorities or combined authorities and the establishment of joint committees or pooled funds

Define the strategic aims and objectives of the Trusts

Approve Strategies.

Approve Outline and Full Business Cases for Capital Investment.

Approve the annual plan and operating budget.

Ratify proposals for acquisition, disposal or change of use of land and / or buildings.

Approve the opening of bank accounts and banking arrangements.

Making accommodation or further services available to private patients, provided such activity does not significantly interfere with NHS functions

Acquisition and disposal of property, entering into contracts, acceptance of gifts and employment of staff

Approve proposals in individual cases for the write-off of losses or making of special payments above the limits of delegation to the Chief Executive Officer and Chief Finance Officer (for losses and special payments) previously approved by the Group Board.

Approve proposals for action on litigation against or on behalf of the Trust(s)

Review use of NHS Resolution Clinical Negligence Scheme for Trusts and risk pooling schemes (Liabilities to Third Parties Scheme / Property Expenses Scheme).

Approval of any change in ownership interest (including and new ownership interest) in a third-party organisation (including associates, joint ventures, and subsidiaries).

Approval of the introduction or discontinuance of any significant activity or operation.

Making, operating and varying joint working and delegation arrangements with other relevant bodies, local authorities or combined authorities and the establishment of joint committees or pooled funds

Approval of policies not covered elsewhere.

Approve the Fit and Proper Person Test Framework.

Approve the disciplinary procedure for officers of the Trust(s).

Approve the procedures for the management of conflicts of interest, gifts, hospitality and sponsorship.

Preparation and submission of joint applications for statutory transactions and associated steps, provided the Trust Board and Council of Governors have given the requisite approvals

**Approved by resolution of the Board of Directors of WIRRAL COMMUNITY HEALTH AND CARE NHS Foundation Trust on 1 April 2026.**

## SCHEME OF RESERVATION AND DELEGATION

### WIRRAL UNIVERSITY TEACHING HOSPITAL NHS FOUNDATION TRUST (Trust)

This Scheme of Reservation and Delegation (**Scheme**) is adopted by the Board of Wirral University Teaching Hospital NHS Foundation Trust (**Trust Board**) to sets out those decisions which are reserved for the Trust Board and those which may be delegated to the general purpose joint committee established by the Trust and Wirral Community Health and Care under sections 65Z5 and 65Z6 of the National Health Service Act 2006 ("**2006 Act**") pursuant to a Partnership Agreement dated 10 February 2026. ("**PCA**").

The Scheme is supplemental to, and must be read alongside, the Trust's Constitution, the PCA, the Standing Orders for the Trust Board (**SO**) and standing financial instructions (**SFI**). Nothing in the Scheme permits the delegation or joint exercise of any statutory function that the Trust is prohibited from delegating.

Nothing in this Scheme affects any existing delegation from the Trust Board to its committees or to officers under the Trust's Standing Orders and Standing Financial Instructions, save that where a function is delegated to the Group Board that function will, to the extent of the delegation, no longer be exercisable by a Trust Board committee or officer unless specifically authorised by the Group Board or by the Trust Board acting under a reserved power.

This Scheme takes effect on the date of approval by the Trust Board and will be reviewed annually.

<b>Matters Reserved to the Trust Board</b>
The Trust Board may determine any matter, for which it has delegated or statutory authority, it wishes in full session within its statutory powers.
Approval of the annual accounts, auditor's report and annual report
Approval of amendments to the Constitution
Compliance with any capital expenditure limit imposed by NHS England

Approval of proposals to increase by 5 per cent or more the proportion of total income derived from non-NHS activity
Decisions to borrow money, invest money, form or acquire bodies corporate or give financial assistance
Decision to undertake a statutory transaction or a significant transaction (as defined in the Constitution)
Discharging the duty to ensure public and patient membership is representative
All functions relating to Trust Special Administration
Establishment of terms of reference, composition and reporting arrangements of the Audit Committee and Remuneration Committee
Approval of arrangements relating to the discharge of the Trust's responsibilities as a corporate trustee for funds held on trust, such as charitable funds including the requirements of sections 149 and 152 of the Charities Act 2011
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Establish terms of reference and reporting arrangements of all sub-committees that are established by the Group Board.

Approval of a Group Governance Manual incorporating Standing Orders, a schedule of matters reserved to the Group Board and Standing Financial Instructions for the regulation of its proceedings and business.

Suspend, vary or amend any aspect of the Group Governance Manual.

Ratify any urgent decisions taken by the Chair and Chief Executive Officer in public session.

Approve a scheme of delegation of powers from the Group Board to its committees.

Require and receive the declaration of Group Board members' interests that may conflict with those of the Trusts and determining the extent to which that member may remain involved with the matter under consideration.

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Approve the annual plan and operating budget.

Ratify proposals for acquisition, disposal or change of use of land and / or buildings.

Approve the opening of bank accounts and banking arrangements.

Making accommodation or further services available to private patients, provided such activity does not significantly interfere with NHS functions

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Approve proposals in individual cases for the write-off of losses or making of special payments above the limits of delegation to the Chief Executive Officer and Chief Finance Officer (for losses and special payments) previously approved by the Group Board.

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Review use of NHS Resolution Clinical Negligence Scheme for Trusts and risk pooling schemes (Liabilities to Third Parties Scheme / Property Expenses Scheme).

Approval of any change in ownership interest (including and new ownership interest) in a third-party organisation (including associates, joint ventures, and subsidiaries).

Approval of the introduction or discontinuance of any significant activity or operation.

Making, operating and varying joint working and delegation arrangements with other relevant bodies, local authorities or combined authorities and the establishment of joint committees or pooled funds

Approval of policies not covered elsewhere.

Approve the Fit and Proper Person Test Framework.

Approve the disciplinary procedure for officers of the Trust(s).

Approve the procedures for the management of conflicts of interest, gifts, hospitality and sponsorship.

Preparation and submission of joint applications for statutory transactions and associated steps, provided the Trust Board and Council of Governors have given the requisite approvals

**Approved by resolution of the Board of Directors of Wirral University Teaching Hospital NHS Foundation Trust on 1 April 2026.**

# Standing Orders for Practice and Procedure for the Board of Directors

## 1. Introduction

1.1 These Standing Orders set out the practice and procedure of the Board of Directors (**Board**) of Wirral University Teaching Hospital NHS Foundation Trust and Wirral Community Health and Care NHS Foundation Trust (the **Trusts**). The Trusts are working together as a Group (the **Group**).

## 2. Interpretation

2.1 Save as permitted by law and subject to the Constitution, the Joint Chair shall be the final authority on the interpretation of these Standing Orders (on which they should be advised by the Director of Corporate Affairs and/or the Board Secretary).

2.2 Unless contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in each Trust's Constitution.

2.3 These Standing Orders apply to each Trust within the Group and references in these Standing Orders shall be interpreted accordingly to refer to the relevant Trust and its structures and policies, including its Constitution. Each Trust remains a separate statutory organisation.

## 3. General

3.1 All business shall be conducted in the name of the Trust.

3.2 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

3.3 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are the Reserved Functions of the Board set out in the Trust's Scheme of Reservation and Delegation.

## 4. Appointment and Removal of the Chair and Other Non-Executive Directors

4.1 The Chair and Non-Executive Directors are to be appointed by the Council of Governors, who will ensure that the Board is composed according to the requirements of the Provider Licence and the Trust Constitution.

- 4.1.1 No person shall be appointed who does not satisfy all the requirements as set out in paragraph (3) and referenced in paragraph (4) of regulation 5 (fit and proper persons: directors) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936).
- 4.1.2 The Council of Governors may establish a Committee to agree and oversee the process to appoint the Non-Executive Directors, and which will then make formal recommendations on that appointment to the Council of Governors.
- 4.2 Any proposal for removal of either the Chair or a Non-Executive Director must be proposed by a Governor and approved by no less than three quarters of the Council of Governors.
  - 4.2.1 Written reasons for the removal must be provided to the Non-Executive Director in question, who shall be given the opportunity to respond.
  - 4.2.2 The Council of Governors shall take into account the annual appraisal carried out by the Chair.
  - 4.2.3 Should the proposal not be approved, no further proposal may be put forward to remain the same individual based upon the same reasons within twelve (12) months of that meeting.

## **5. Meetings**

- 5.1 Meetings of the Board must be open to the public, unless the Board in its absolute discretion decides otherwise in accordance with paragraph 31.1 of the Constitution.
- 5.2 The Joint Chair shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that business shall be conducted without interruption and disruption. The Joint Chair may exclude any member of the public or representative from the press from the meeting of the Board if they consider that that member of the public or representative from the press is interfering with or preventing the proper conduct of the meeting.
- 5.3 Any record of the proceedings taken by the public or representatives of the press shall only be in writing unless otherwise agreed by the Board.
- 5.4 Calling Meetings
  - 5.4.1 Ordinary meetings of the Board shall be held at such times, places and format (including in-person, electronic, or hybrid) as the Board may determine. The Joint Chair or Board Secretary may call a meeting of the Board at any time.

5.4.2 Four Directors may call a meeting of the Board at any time upon submitting a request in writing to the Board Secretary. If a meeting is not then called within a period of at least fourteen but not more than twenty-eight days of a request being presented, the four Directors may call such a meeting.

## 5.5 Notice of Meetings

5.5.1 Before each meeting, a notice of the meeting, specifying the business proposed to be transacted, shall be delivered to every Director, or sent by post or email to their usual place of residence, so as to be available to them at least three clear days before the meeting. The Joint Chair may waive the notice required in the case of emergencies or in the case of the need to conduct urgent business.

5.5.2 Lack of service of the notice on any Director shall not affect the validity of a meeting.

5.5.3 A public notice of the date, time and place of each Board meeting will also be displayed at the Trust's headquarters and on the Trust's website at least three clear days before the meeting.

## 5.6 Setting the Agenda

5.6.1 The agenda for all the meetings will be prepared by the Joint Chair and Chief Executive, assisted by the Board Secretary.

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

5.6.3 A Director who wishes to add an item should notify the Joint Chair at least ten days before the meeting.

## 5.7 Chair of Meeting

5.7.1 At any meeting of the Board, the Joint Chair, if present, shall preside. If the Joint Chair is absent from the meeting the Deputy Chair, if there is one and he is present, shall preside. If the Joint Chair and Deputy Chair are absent, such Non-Executive Director as the Directors present shall choose shall preside.

5.7.2 If the Joint Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Joint Chair and Deputy Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.

## 5.8 Quorum

5.8.1 No business shall be transacted at a meeting of the Board unless at least one third of the whole number of voting Directors is present, including at least the Chief Executive Officer (or an Executive nominated by the Chief Executive Officer) and two Non-Executive Director.

5.8.2 An officer in attendance for an Executive Director at the Board but without formal acting up status may not count towards the quorum.

## 5.9 Attendance at Meetings

5.9.1 The Board may agree that its members can participate in its meetings by telephone, video or computer link provided it remains live and uninterrupted. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

5.9.2 Directors who are unable to attend a meeting should advise the Board Secretary in advance of the meeting so that their apologies may be submitted.

## 5.10 Chair's Ruling

5.10.1 Statements of Directors made 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 observed at the meeting.

## 5.11 Voting

5.11.1 Subject to any legal requirements or any requirements of the Constitution, if in the opinion of the Chair of the meeting, a vote should be required on a question at the meeting, it shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the Chair of the meeting shall have a second or casting vote.

5.11.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, 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 or the Chair of the meeting so directs.

5.11.3 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.

- 5.11.4 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 5.11.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 5.12 Minutes
  - 5.12.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting.
  - 5.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair of the meeting considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting
  - 5.12.3 The names of the Directors present at the meeting shall be recorded in the minutes.
  - 5.12.4 A copy of the minutes, following agreement from the Board, will be made available to the Council of Governors.
  - 5.12.5 Where providing a record of a public meeting, the minutes shall be made available to the public.

## **6. Arrangement for the Exercise of Functions by Delegation**

- 6.1 Subject to the Constitution, the Trust's Licence or any legal requirements, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee of Directors or by an Executive Director, or by a joint committee, in each case subject to such restrictions and conditions as the Board thinks fit.
- 6.2 A written Scheme of Reservation and Delegation (SoRD) shall be prepared by the Board Secretary and approved by the Board.
- 6.3 Nothing in the SoRD shall impair the overall responsibility of the Board or the discharge of the direct accountability to the Board of the Chief Executive or other Executive Director to provide information and advise the Board in accordance with the Constitution or any statutory requirements or any requirements of the Trust's Licence.
- 6.4 The powers which the Board has retained to itself may in emergency be exercised by the Chief Executive and the Joint Chair. The exercise of such powers by the Chief Executive and the Joint Chair shall be reported to the next formal meeting of the Board for ratification.

## **7. Committees**

- 7.1 Subject to the Constitution and such directions as may be given by NHS England, the Board may appoint committees and joint committees of the Board.
- 7.2 Each such committee or joint committee shall have such terms of reference and powers and be subject to such conditions, as the Board shall decide.
- 7.3 Committees or joint committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 7.4 Any committee or joint committee minutes will be shared with the Board.

## **8. Standards of Business Conduct and Interests**

- 8.1 All Directors shall comply with the Standards of Business Conduct, Managing Conflicts of Interest and Anti- Fraud and Anti-Bribery Policies.
- 8.2 Directors are required to comply with the Trust's Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Board. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 8.3 At the time Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring. It is the obligation of the Director to inform the Board Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest.
- 8.4 Unless otherwise authorised by the remaining members of the Board, if a conflict of interest is established during the course of a Board meeting, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, the majority will resolve the issue with the Chair of the meeting having the casting vote.
- 8.5 In accordance with the Constitution, the Board Secretary will ensure that a Register of Interests is established to record formal declarations of interests of Directors.
- 8.6 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 8.7 The Register will be available to the public and the Board Secretary will take reasonable steps to bring the existence of the Register to the

attention of the local population and to publicise arrangements for viewing it.

## **9. Review, Suspension and Change of Standard Orders**

### **9.1 Suspension of Standing Orders**

9.1.1 Except where this would contravene any provision of the Constitution, any statutory provision or any requirement of the Trust's Licence, any one or more of these SOs may be suspended at any meeting, provided that at least two-thirds of the Directors are present. This shall include at least one Executive Director and two Non-Executive Directors and a majority of those present vote in favour of suspension.

9.1.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.

9.1.3 No formal business may be transacted while SOs are suspended for procedural purposes.

9.1.4 The Audit Committee shall review every decision of the Board to suspend SOs.

### **9.2 Variation and Amendment of Standing Orders**

9.2.1 These Standing Orders may only be amended if:

- (a) No fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
- (b) at least two-thirds of the Directors are present; and
- (c) the variation proposed does not contravene a statutory provision or direction.

9.2.2 The Board will review these Standing Orders annually.

## **10. Custody of Seal and Sealing of Documents**

10.1 The Board Secretary shall have charge of the Trust's seal which will be kept in a secure place.

10.2 The seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee or joint committee, where the Board has delegated its powers.

10.3 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings should be made to the Audit Committee on an annual basis.

## **11. Adoption**

11.1 These Standing Orders were approved by the Board on 1 April 2026 and take effect immediately.

# Standing Orders for Practice and Procedure for the Council of Governors

## 1. Introduction

- 1.1 These Standing Orders set out the practice and procedure of the Council of Governors of Wirral University Teaching Hospital NHS Foundation Trust and Wirral Community Health and Care NHS Foundation Trust (**the Trusts**).

## 2. Interpretation

- 2.1 Save as permitted by law and subject to the Constitution of the relevant Trust, the Joint Chair of the Trust shall be the final authority on the interpretation of these Standing Orders (on which they should be advised by the Board Secretary).
- 2.2 Unless contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in the relevant Trust's Constitution.
- 2.3 These Standing Orders apply to each Council of Governors within the Group and references in these Standing Orders shall be interpreted accordingly to refer to the relevant Trust and its structures and policies, including its Constitution.

## 3. General

- 3.1 All business shall be conducted in the name of the Trust.

## 4. Meetings

- 4.1 Meetings of the Council of Governors must be open to the public, unless the Joint Chair in their absolute discretion decides otherwise in accordance with paragraph 19.3 of the Constitution.
- 4.2 The Joint Chair shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that business shall be conducted without interruption and disruption. The Chair of the meeting may exclude any member of the public or representative from the press from the meeting of the Council of Governors if they consider that that member of the public or representative from the press is interfering with or preventing the proper conduct of the meeting.
- 4.3 Any record of the proceedings taken by the public or representatives of the press shall only be in writing unless otherwise agreed by the Joint Chair.

- 4.4 The Council of Governors is not obligated to permit recording or live reporting of the proceedings without the Joint Chair's prior consent.
- 4.5 Calling Meetings
- 4.5.1 Meetings of the Council of Governors shall be held at such times, places and format (including in-person, electronic, or hybrid) as determined by the Joint Chair. The Joint Chair may also call additional meetings as needed.
- 4.5.2 Governors can request a meeting by notifying the Joint Chair with a notice signed by at least one-third of the governors.
- 4.6 Notice of Meetings
- 4.6.1 Before each meeting, a notice of the meeting, specifying the business proposed to be transacted, shall be delivered to every governor, or sent by post or email to their usual place of residence, so as to be available to them at least seven clear days before the meeting. The Joint Chair may waive the notice required in the case of emergencies or in the case of the need to conduct urgent business.
- 4.6.2 Failure to serve notice on any governor shall not affect the validity of a meeting.
- 4.6.3 A public notice of the date, time and place of each Council of Governors meeting will also be displayed at the Trust's headquarters and on the Trust's website at least three clear days before the meeting, except in the case of emergency meetings.
- 4.7 Setting the Agenda
- 4.7.1 The agenda for all the meetings will be prepared by the Joint Chair, assisted by the Board Secretary.
- 4.7.2 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.7.3 A governor desiring a matter to be included on an agenda, shall make their request in writing to the Joint Chair at least 10 clear days before the meeting save in an emergency.
- 4.8 Chair of Meeting
- 4.8.1 At any meeting of the Council of Governors, the Joint Chair, if present, shall preside. If the Joint Chair is absent from the meeting the Deputy Chair, if there is one and he is present, shall preside. If the Joint Chair and Deputy Chair are absent,

such Non-Executive Director as the Directors present shall choose shall preside.

4.8.2 If the Joint Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Joint Chair and Deputy Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.

#### 4.9 Quorum

4.9.1 No business shall be transacted at a meeting of the Council of Governors unless one third of the total number of governors in post is present with a majority of those present being Public Governors.

4.9.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjournment for seven days and upon reconvening, those present shall constitute a quorum.

4.9.3 If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

#### 4.10 Attendance at Meetings

4.10.1 The Joint Chair may agree that members of the Council of Governors can participate in its meetings by telephone, video or computer link provided it remains live and uninterrupted. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

4.10.2 Governors who are unable to attend a meeting should advise the Board Secretary in advance of the meeting so that their apologies may be submitted

#### 4.11 Chair's Ruling

4.11.1 Statements of governors made at meetings of the Council of Governors 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 observed at the meeting.

#### 4.12 Voting

4.12.1 Subject to any legal requirements or any requirements of the Constitution if in the opinion of the Chair of the meeting, a vote

should be required on a question at a meeting of the Council of Governors, it shall be determined by a majority of the votes of the Governors present and voting on the question.

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

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

4.12.4 The Joint Chair is not a member of the Council of Governors and shall not be entitled to vote.

#### 4.13 Minutes

4.13.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.

4.13.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair of the meeting considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.13.3 The names of the governors present at the meeting shall be recorded in the minutes.

4.13.4 Minutes shall be circulated in accordance with the Council of Governors wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

### 5. Arrangements for the Exercise of Functions

5.1 The Council of Governors may not delegate any of its functions or powers to an individual, committee, or sub-committee, but it may appoint groups consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Board Secretary, request that advisors assist them or any working group they appoint in carrying out its duties.

5.2 If for any reason these Standing Orders 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 Council of Governors for action or ratification. All members of the Council of Governors have a duty to disclose any non-compliance with these Standing Orders to the Board Secretary as soon as possible.

## **6. Standards of Business Conduct and Interests**

- 6.1 Each member of the Council of Governors shall comply with the Trust's Standard of Business Conduct, Conflicts of Interest and Anti-Fraud and Anti-Bribery Policies.
- 6.2 Governors are required to comply with the Trust's Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Council of Governors. All governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 6.3 If a conflict of interest is established during the course of a meeting of the Council of Governors, the governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt this includes voting on such an issue where a conflict is established.
- 6.4 If members of the Council of Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Joint Chair or the Board Secretary.
- 6.5 Every Governor shall disclose to the Board Secretary any relationship between themselves and a candidate of whose candidature that a member of the Council of Governors is aware.
- 6.6 On election or appointment, Governors should disclose to the Board Secretary whether they are related to any other member of the Council of Governors or holder of any office in the Trust.
- 6.7 In accordance with the Constitution, the Board Secretary will ensure that a Register of Interests is established to record formal declarations of interests of governors.

## **7. Confidentiality**

- 7.1 A governor shall not disclose a matter reported to the Council of Governors or otherwise dealt with by the Council of Governors, notwithstanding that the matter has been reported, or action has been concluded, if the Council of Governors shall resolve that it is confidential or they are otherwise notified that such matter is confidential by a Director of the Trust.
- 7.2 A governor shall not reveal or disclose the contents of papers marked 'in confidence' or minutes headed 'Items taken in Private' outside of the Trust, without the express permission of the Joint Chair. This prohibition shall apply equally to the content of any discussion during the meeting which may take place on such reports and papers.

## **8. Review, Suspension and Change of Standard Orders**

- 8.1 The Standing Orders may not be suspended by the Council of Governors

8.2 These Standing Orders may only be amended if agreed by the Board of Directors of the Trust.

8.3 These Standing Orders shall be reviewed at least every three years.

## **9. Adoption**

9.1 These Standing Orders were approved by the Board on 1 April 2026 and take effect immediately.