

## ANNEX 6

### ADDITIONAL PROVISIONS - COUNCIL OF GOVERNORS

#### ANNEX 6A – Transitional Schedule at inception (2010)

1. The total number of elected **Public** Governors serving a 3 year term following the initial elections will be 11 (out of 16 seats). The 11 will be those
  - 1.1 Elected in an uncontested election (i.e. no ballot held), and
  - 1.2 Then the remaining appointments will be those who have polled the highest number of votes in descending order to complete the 11.
2. The remaining 5 Public Governors will hold an initial term of 2 years.
3. The total number of elected **Staff** Governors serving a 3 year term following the initial elections will be 3 (out of 5 seats). These 3 will be those
  - 3.1 Elected in an uncontested election (i.e. no ballot held)
  - 3.2 And then the remaining appointments will be those who have polled the highest number of votes in descending order to complete the 5.
4. The remaining 2 staff Governors will hold an initial term of 2 years
5. No elected Governor may hold office for longer than 9 years or 3 terms (agreed at Council on 17 June 2015).

#### Annex 6B - Disqualification

6. The following may not become or continue as a member of the Council of Governors:
  - 6.1 a Director of the Trust or a director of an NHS trust or another foundation trust;
  - 6.2 a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 6.3 being a Member of the Public Constituency, a person who refuses to sign, or has falsely made a declaration in the form prescribed at Paragraph 13 and/or of this Annex 6 of their qualification to vote as a Member and that they are not prevented from being a member of the Council of Governors as required to be made under Section 60 of the 2006 Act;
  - 6.4 a vexatious complainant as determined in accordance with the Trust's complaints procedure;

- 6.5 a person who is required to notify the police of his name and address as a result of being convicted or cautioned for relevant sex offences pursuant to the Sex Offenders' Act 1997 or other relevant legislation;
- 6.6 a person who has been disqualified from being a member of a relevant authority under the provisions of the Local Authority Act 2000;
- 6.7 a person who, on the basis of disclosures obtained through an application to the Criminal Records Bureau, is considered unsuitable by the Trust's Executive Director responsible for Human Resources;
- 6.8 a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, or ill health from any paid employment with the Trust or with a Health Service Body;
- 6.9 a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service, or for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 6.10 he is a medical practitioner that has been disqualified by a direction under section 46 of the 1977 Act (as amended and re enacted from time to time ) from any list prepared under Part II of that Act, and has not subsequently had his name included in such a list or
- 6.11 he is any other health or social care practitioner whose professional and/or other registrations appropriate to his practice and specialty have been suspended, disqualified, revoked or removed in any manner or he has otherwise failed to maintain or lost his registration for any disciplinary breaches or pursuant to any other proceedings and such registration has not been subsequently reinstated
- 6.12 a person who has refused without reasonable cause to undertake any training which the Trust requires all Governors to undertake;
- 6.13 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors; or
- 6.14 if any of the grounds contained in paragraph 14 of the Constitution apply.

#### **Annex 6C - Removal**

7. A Governor may be removed from the Council of Governors if any grounds exist under paragraph 6 above, or by a resolution approved by not less than half of the remaining Governors present and voting on the grounds that:
  - 7.1 he has committed a serious breach of the code of conduct; and/ or
  - 7.2 he has acted in a manner detrimental to the interests of the Trust; and/or
  - 7.3 the Council of Governors consider that it is not in the best interest of the Trust for him to continue as a Governor.

8. A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary or the Chairman.
9. If a Governor fails to attend at least 2 successive meetings of the Council of Governors over a period of one year, the Council of Governors may terminate that Governor's tenure of office provided that at least half of the Council of Governors present and voting at a meeting of the Council of Governors agree, unless the other Governors are satisfied that:
  - 9.1 the absences were due to reasonable causes; and
  - 9.2 that Governor will be able to start attending meetings of the Council of Governors again within such a period as the Governors consider reasonable.

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

- (a) prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
- (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
- (c) adversely affect public confidence in the goods and services provided by the Trust; or
- (d) otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or
- (e) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
- (f) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or
- (g) he has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him to undertake in his capacity as a Governor by a date six months from the date of his election or appointment; or
- (h) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the

Trust, the Constitution and/or the Terms of Authorisation; or

- (i) he has committed a material breach of any code of conduct applicable to Governors of the Trust and/or the Governors Standing Orders.

In addition, removal from the council of governors may be appropriate where behaviours or actions by a governor or group of governors may be incompatible with the values and behaviours of the NHS foundation Trust.

Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties should be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise..

### **Annex 6D - Vacancies**

10. 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:
11. 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; and
12. where the vacancy arises amongst the Elected Governors, the Council of Governors may:
  - a. Where an elected public or staff governor ceases to hold office within six months of his appointment, the Trust shall offer the candidate who is not currently a governor and who secured the second highest number of votes in the last election for the constituency (or class of constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retiring member's term of office. If that candidate does not wish to fill the vacancy it will then be offered to the candidate who secured the next highest number of votes until the vacancy is filled.
  - b. If no reserve candidate is available or willing to fill the vacancy, or if the vacancy occurs beyond the six month period, a election will then be held in accordance with the Election Scheme save that if an election is due to be held within 6 months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the number of Public Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
  - c. When a vacancy has arisen and an election is held, the Governor elected will serve the unexpired period of the term of office of the Governor who is being replaced.
  - d. The Returning Office under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out above.

- e. Eligibility to be elected as Governor as part of this vacancy process will be checked against the full Electoral Register or equivalent to confirm the candidate is still a current member of that constituency.

### **Annex 6E- Governors' Declarations**

- 13** Section 60 of the 2006 Act requires persons standing for and voting in elections to make a declaration setting out the particulars of their qualifications to vote or stand as a member of the public constituency (or class or area) for which the election is being held.
- 14** The specified form of declaration shall be set out on the nomination paper referred to in the Model Rules for Elections at Annex 5. and shall state as follows:
  - "I hereby declare that I am at the date of this declaration a Member of the Public Constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution."
- 15** Governors elected to the Council of Governors by the Public Constituency or Staff Constituency may not for the purposes of Section 60(3) of the 2006 Act vote at a meeting of the Council of Governors unless within the period since his election, he has made a declaration in the form specified in paragraph 3.3.4 below stating which Constituency he is a Member of and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or by virtue of any provisions of this constitution.

The specified form of declaration is given below

**GOVERNORS' DECLARATION**

**ASHFORD AND ST. PETER'S HOSPITALS NHS FOUNDATION TRUST (the "Trust")**

I, ..... (insert name)

Of ..... (insert address)

Hereby declare that I am entitled to:-

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

(b) be appointed to the Council of Governors as a governor because I have been appointed by a nominating organisation in accordance with paragraph 11 of the Constitution;

and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under paragraph 14 of the Constitution of the Trust and that I am entitled to vote at meetings of the Council of Governors as a governor pursuant to such appointment or election.

Signed .....

Print

Name.....

Date of Declaration .....

\*delete as appropriate