

ANNEX 9
FURTHER PROVISIONS

Annex 9A – Disqualification from Membership

1. An individual may not become or continue as a Member of the Trust if:
 - 1.1 the individual is under fourteen years of age;
 - 1.2 the individual has been specifically excluded in writing from any of the Trust's premises or other facilities in whole or in part following a decision of the Board of Directors that such a course of action is necessary because the individual concerned has been violent, aggressive or has committed an act of gross misconduct; or
 - 1.3 the Board of Directors considers that an individual has acted or is likely to act in a manner contrary to the interests of the Trust and after the Trust has consulted with or made reasonable efforts to consult with the individual about the concerns of the Board and the Board notifies the individual about his disqualification accordingly.
 - 1.4 the individual fails or ceases to fulfil the criteria for Membership of any of the constituencies;
 - 1.5 the individual was formerly employed by the Trust or the Applicant NHS Trust and was dismissed for gross misconduct;
 - 1.6 the individual was formerly employed by the Trust or the Applicant NHS Trust and in the preceding two years was lawfully dismissed other than by reason of redundancy;
 - 1.7 the individual has been involved as a perpetrator in a serious incident of violence or abuse in the last five years at any of the Trust's Hospitals or against any of the Trust's staff members or Patients;
 - 1.8 the individual has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 1.9 the individual has been identified as a vexatious complainant or has been excluded from treatment at any of the Trust's Hospitals due to unacceptable behaviour; and is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust.
2. Notwithstanding anything contained in this Constitution, no person who ceases to be a member of the Trust pursuant to paragraphs 1 above shall be re-admitted to Membership except by a decision of the Board of Directors.
3. It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from Membership, they shall carry out all reasonable enquiries to establish if this is the case.

Annex 9B - Termination of membership

4. A Member shall cease to be a Member if that Member:
 - 4.1 resigns by notice to the Secretary or the Chief Executive;
 - 4.2 ceases to fulfil the requirements of Membership as set out in paragraphs 7 to 8 of this Constitution;
 - 4.3 dies; or
 - 4.4 the Trust secretary, having made reasonable enquiries, determines that the member no longer wishes to be a member or he ceases to be eligible as a member for whatever reason.

Annex 9C - Members' Declaration

5. A Member may not for the purpose of Section 60(1) of the 2006 Act vote at an election for a Public Governor unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a Member of the Public Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

Annex 9D – Additional Provisions: Board of Directors

6. Disqualification

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

- 6.1 a member of the Council of Governors;
- 6.2 a spouse, partner, parent or child of a member of the Board of Directors;
- 6.3 a member of the LINK responsible for the Trust or its successor in title
- 6.4 a member of a local authority's Scrutiny Committee covering health matters;
- 6.5 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 6.6 the Trust has been notified by an appropriate authority that their name appears on the sex offenders register
- 6.7 a person whose tenure in office as a chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the health service, non attendance at meetings, or for non-disclosure of a pecuniary interest;
- 6.8 a person who within the preceding two years has been dismissed, otherwise than by reasons of redundancy, from any paid employment with a Health Service Body;
- 6.9 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;
- 6.10 a person who has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors; or

- 6.11 in the case of a Non-Executive Director, a person who is no longer a member of the Public Constituency.

Annex 9E - Resolution of Disputes

7. Dispute Resolution between Board of Directors and Council of Governors
- 7.1 Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below recognises the different roles of the Governors and the Directors as described in the Constitution.
- 7.2 The Senior Independent Director is to be available to Governors if they have concerns which contact through the normal channels of Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.
- 7.3 The Chairman, or Deputy Chair (if the dispute involves the Chairman) shall first endeavour through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 7.4 Failing resolution under paragraph 7.3 above then the Chairman shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to clearly and concisely produce a recommendation statement to the Council of Governors and Board of Directors with a view to resolving the dispute (the "Recommendation Statement").
- 7.5 The Chairman shall ensure that the Recommendation Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of both the Board of Directors and the Council of Governors.
- 7.6 If the matter remains unresolved or only partially resolved then the procedure outlined in paragraph 7.3 above shall be repeated.
- 7.7 If, in the opinion of the Chairman or Deputy Chair (if the dispute involves the Chairman), and following the further discussions prescribed in paragraph 6.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council of Governors and the Board of Directors accordingly.
- 7.8 On the satisfactory completion of this disputes process the Board of Directors shall implement agreed changes.
- 7.9 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 7.10 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the Terms of Authorisation.

8 Other Disputes

- 8.1 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter

shall be referred to the Secretary (or such other office of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

- 8.2 The Secretary (or his nominated representative) shall:
 - 8.2.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Secretary considers appropriate;
 - 8.2.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and
 - 8.2.3 communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.
- 8.3 If the Member is aggrieved of the decision of the Secretary pursuant to paragraph 7.2 above, he may appeal in writing to the Chairman within 14 days of the Secretary's decision. The Chairman's decision is to be final.
- 8.4 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chairman and Chief Executive of the Trust, who shall use their reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.