

14 July 2017  
Item No 7

## Council of Governors: Summary Sheet

**Title of Paper:**

**Presented By:**

**Action Required:**

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

To which duty does this refer:

Holding non-executive directors individually and collectively to account for the performance of the Board	
Appointment, removal and deciding the terms of office of the Chair and non-executive directors	
Determining the remuneration of the Chair and non-executive directors	
Appointing or removing the trust's auditor	
Approving or not the appointment of the trust's chief executive	
Receiving the annual report and accounts and auditor's report	
Representing the interests of members and the public	
Approving or not increases to non-NHS income of more than 5% of total income	
Approving or not acquisitions, mergers, separations and dissolutions	
Jointly approving changes to the trust's constitution with the Board	x
Expressing a view on the Trust's forward plans	
Consideration on the use of income from the provision of goods and services from sources other than the NHS in England	
Monitoring the activities of the Trust to ensure that they are being conducted in a manner consistent with its terms of authorisation and the constitution.	
Monitoring the Trust's performance against its targets and strategic aims	

**How does this item support the functioning of the Council of Governors?**

Voting either for or against constitutional changes supports the Council in undertaking its duty as defined in paragraph 45 of the constitution.

**Author of Report:**

**Designation of Author:**

**Date:**

## SUMMARY REPORT

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**Report to:** Council of Governors

**Date:** 14 July 2017

**Subject:** Annual review of Sheffield Health and Social Care NHS Foundation Trust's Constitution and supporting documents

**Presented by:** Jayne Brown, Chair

**Author:** Jill Dentith, Management Consultant

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### 1. Purpose

<i>For Approval</i>	<i>For a collective decision</i>	<i>To report progress</i>	<i>To seek input from</i>	<i>For information</i>	<i>Other (please state below)</i>
X					

### 2. Summary

This paper details proposed changes to the Sheffield Health and Social care NHS Foundation Trust's Constitution and seeks approval for those proposed changes through due process via the Trust's corporate governance structure.

It is designed as one document which will be presented at a number of the Trust's governance groups, committees and Board. Group, committee and Board members should review discuss and approve the sections relevant to their remit.

#### 2.1 The Constitution and Supporting Documents

The Constitution is made up of several parts as detailed below:

- Constitution – the main body of the document
- Annex 1 – The Public Constituency
- Annex 2 – The Staff Constituency
- Annex 3 – The Service User and Carers' Constituency
- Annex 4 – Composition of Council of Governors
- Annex 5 – Model Rules for Elections
- Annex 6 – Additional Provisions – Council of Governors

- Annex 7 – Council of Governors Standing Orders
- Annex 8 – Board of Directors Standing Orders
- Annex 9 - Further Provision

## 2.2 Approval Process

Each element of the Constitution and supporting documents is required to be reviewed annually and proposed changes discussed and approved through a range of groups, committees and Board.

The Constitution (Section 45 – Amendment of the Constitution) states:

*“45.1 The Trust may make amendments of its constitution only if:*

*45.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and*

*45.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.*

The above requirements must be adhered to subject to the proposed changes to the Constitution and supporting documents.

The Constitution and supporting documents were presented to Executive Directors Group (EDG) on 6 July, the Audit Committee on 11 July followed Board on 12 July. It is presented to the Council of Governors (CoG) on 14 July and will be presented to Finance and Investment Committee (FIC) on 24 July 2017. If FIC identify any further minor amendments post Council of Governors (CoG) deemed to be significant then a further paper will be presented to the October CoG and the final amendments presented to November Board 2017.

## 2.3 Supporting information

Attached are the following supporting documents:

- Appendix A – Authorisation Requirements for Approval of Changes to Governance Documents (overview). This table details the approval process that each section of the Constitution has to go through prior to presentation for final approval
- Appendix B – this is a table of proposed changes to the Trust’s constitution and supporting documents.

Amended and tracked changed versions of all these documents are available on request from the Director of Corporate Governance (Board Secretary).

## 3 Next Steps

As detailed above the Council of Governors (CoG) must vote on the changes to the constitution.

Following Board approval and subject to CoG approval the Constitution and supporting documents will be amended accordingly.

The PA to the Chief Executive and the Executive Director of Finance will hold the master copy of the Constitution and supporting documents.

The Director of Corporate Governance (Board Secretary) will ensure that the approved versions of the Constitution and supporting documents are uploaded onto the Trust's intranet and internet and will advise NHS Improvement of the changes and supply them with copies of updated documents as necessary.

#### **4 Actions**

CoG is required to vote on approving the detailed amendments.

#### **5 Monitoring Arrangements**

The Director of Corporate Governance (Board Secretary) will liaise with the Executive Director of Finance to ensure that the Constitution and supporting documents are reviewed on an annual basis and any proposed changes taken due process as detailed above.

#### **6 Contact Details**

Margaret Saunders, Director of Corporate Governance (Board Secretary).

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Sheffield Health & Social Care NHS Foundation Trust  
 Authorisation Requirements for Approval of Changes to Governance Documents (Overview)

Document	Lead Director	EDG (prior to FIC and/or AC)	Finance & Investment Committee	Audit Committee	EDG (prior to CoG and/or Board)	Council of Governors	Board	NHS Improvement
<p><b>Constitution (not including Annex 1 – 9)</b></p> <p>Section 45 of the Constitution and Constitution amendment</p>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission to Audit Committee	Amendments to Constitution not required to be presented to FIC as per FIC ToR.	“Review on behalf of the Board the operation of, and proposed changes to .... the Constitution ...” as per AC ToR.	Any proposed changes should be discussed by EDG prior to presentation at CoG or Board.	<p>Constitution: 45.1.1 “more than half of the members of CoG of the Trust voting approve the amendment” and 45.1.2</p> <p>Constitution: 45.3 and 45.4 cover amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for <u>members’</u> approval. This requires more than half of the members voting to approve.</p>	Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.	Constitution: 45.5 “Amendments by the Trust of its Constitution are to be <u>notified</u> to Monitor (now NHSI). For the avoidance of doubt Monitor’s functions do not include a power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act”.
<p><b>Annex 1 The Public Constituency</b></p>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission to Audit Committee	Amendments to Constitution not required to be presented to FIC as per FIC ToR.	“Review on behalf of the Board the operation of, and proposed changes to .... the Constitution ...” as per AC ToR.	Any proposed changes should be discussed by EDG prior to presentation at CoG or Board.	<p>Constitution: 45.1.1 “more than half of the members of CoG of the Trust voting approve the amendment” and 45.1.2</p> <p>Constitution: 45.3 and 45.4 cover amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for <u>members’</u> approval. This requires more than half of the members voting to approve.</p>	Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.	Constitution: 45.5 “Amendments by the Trust of its Constitution are to be <u>notified</u> to Monitor (now NHSI). For the avoidance of doubt Monitor’s functions do not include a power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act”.

Document	Lead Director	EDG (prior to FIC and/or AC)	Finance & Investment Committee	Audit Committee	EDG (prior to CoG and/or Board)	Council of Governors	Board	NHS Improvement
<b>Annex 2 The Staff Constituency</b>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission to Audit Committee	Amendments to Constitution not required to be presented to FIC as per FIC ToR.	“Review on behalf of the Board the operation of, and proposed changes to .... the Constitution ...” as per AC ToR.	Any proposed changes should be discussed by EDG prior to presentation at CoG or Board.	Constitution: 45.1.1 “more than half of the members of CoG of the Trust voting approve the amendment” and 45.1.2  Constitution: 45.3 and 45.4 cover amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for <u>members’</u> approval. This requires more than half of the members voting to approve.	Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.	Constitution: 45.5 “Amendments by the Trust of its Constitution are to be <u>notified</u> to Monitor (now NHSi). For the avoidance of doubt Monitor’s functions do not include a power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act”.
<b>Annex 3 The Service User &amp; Carers’ Constituency</b>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission to Audit Committee	Amendments to Constitution not required to be presented to FIC as per FIC ToR.	“Review on behalf of the Board the operation of, and proposed changes to .... the Constitution ...” as per AC ToR.	Any proposed changes should be discussed by EDG prior to presentation at CoG or Board.	Constitution: 45.1.1 “more than half of the members of CoG of the Trust voting approve the amendment” and 45.1.2  Constitution: 45.3 and 45.4 cover amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for <u>members’</u> approval. This requires more than half of the members voting to approve.	Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.	Constitution: 45.5 “Amendments by the Trust of its Constitution are to be <u>notified</u> to Monitor (now NHSi). For the avoidance of doubt Monitor’s functions do not include a power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act”.
<b>Annex 4 Composition of Council of Governors</b>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission	Amendments to Constitution not required to be presented to FIC as	“Review on behalf of the Board the operation of, and proposed changes to	Any proposed changes should be discussed by EDG prior to presentation	Constitution: 45.1.1 “more than half of the members of CoG of the Trust	Constitution: 45.1.2 “more than half of the members of the Board of	Constitution: 45.5 “Amendments by the Trust of its Constitution are to

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		to Audit Committee	per FIC ToR.	.... the Constitution ...” as per AC ToR.	at CoG or Board.	voting approve the amendment” and 45.1.2  Constitution: 45.3 and 45.4 cover amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for <u>members’</u> approval. This requires more than half of the members voting to approve.	Directors of the Trust voting to approve the amendments”.	be <u>notified</u> to Monitor (now NHSi). For the avoidance of doubt Monitor’s functions do not include a power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act”.
<b>Annex 5 Model Rules for Elections</b>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission to Audit Committee	Amendments to Constitution not required to be presented to FIC as per FIC ToR.	“Review on behalf of the Board the operation of, and proposed changes to .... the Constitution ...” as per AC ToR.	Any proposed changes should be discussed by EDG prior to presentation at CoG or Board.	Constitution: 45.1.1 “more than half of the members of CoG of the Trust voting approve the amendment” and 45.1.2  Constitution: 45.3 and 45.4 cover amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for <u>members’</u> approval. This requires more than half of the members voting to approve.	Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.	Constitution: 45.5 “Amendments by the Trust of its Constitution are to be <u>notified</u> to Monitor (now NHSi). For the avoidance of doubt Monitor’s functions do not include a power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act”.
<b>Annex 6 Additional Provisions – Council of Governors</b>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission to Audit Committee	Amendments to Constitution not required to be presented to FIC as per FIC ToR.	“Review on behalf of the Board the operation of, and proposed changes to .... the Constitution ...” as per AC ToR.	Any proposed changes should be discussed by EDG prior to presentation at CoG or Board.	Constitution: 45.1.1 “more than half of the members of CoG of the Trust voting approve the amendment” and 45.1.2	Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.	Constitution: 45.5 “Amendments by the Trust of its Constitution are to be <u>notified</u> to Monitor (now NHSi). For the

Document	Lead Director	EDG (prior to FIC and/or AC)	Finance & Investment Committee	Audit Committee	EDG (prior to CoG and/or Board)	Council of Governors	Board	NHS Improvement
						Constitution: 45.3 and 45.4 cover amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for members' approval. This requires more than half of the members voting to approve.		avoidance of doubt Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act".
<p><b>Annex 7 Council of Governors – Standing Orders</b></p> <p>Section 18 of Constitution and Annex 7 – Standing Orders – Council of Governors Section 3.24 – Variation and Amendment of Standing Orders</p>	Director of Corporate Governance	Prior to FIC and/or AC depending on proposed changes.	No role re CoG Standing Orders.	<p>Monitor compliance with SO per ToR.</p> <p>Review on behalf of the Board as per ToR.</p> <p>However, does not specify if it is CoG SO or Board SO or both.</p>	Any proposed changes should be discussed by EDG prior to presentation at CoG.	<p>Annex 7 Section 3.24 "These so shall be amended only if:-</p> <p>the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and unless presented by the Chair or the Chief Executive a notice of motion under SO 3.6 has been given; at least two thirds of the Governors are present, including one Staff Governor, one Public Governor and one Service User and Carers Governor; and no fewer than half the Governors vote in favour of amendment; and Subject always to the fact that no change should be made without prior consent of the Independent Regulator having first been obtained."</p>	<p>Constitution: 45.1.2 "more than half of the members of the Board of Directors of the Trust voting to approve the amendments".</p>	<p>Annex 7 Section 3.2.4 – last paragraph says: "... subject always to the fact that no change should be made without the prior consent of the Independent Regulator having first been obtained."</p> <p>Note: this is different to the Constitution (above).</p>

Document	Lead Director	EDG (prior to FIC and/or AC)	Finance & Investment Committee	Audit Committee	EDG (prior to CoG and/or Board)	Council of Governors	Board	NHS Improvement
<p><b>Annex 8 Board of Directors Standing Orders</b></p> <p>Section 33 of Constitution and Annex 8 – Standing Orders – Board of Directors</p> <p>Section 3.37 – Variation and Amendment of Standing Orders</p>	Director of Corporate Governance	Prior to FIC and/or AC depending proposed changes.	“Review of the Trust’s ..... Standing Orders and where appropriate make recommendations ..... to AC for ratification by the Board” as per FIC ToR.	<p>Monitor compliance with SO as per ToR.</p> <p>Review on behalf of the Board as per ToR, however, does not specify if its CoG SO or Board SO or both.</p>	Any proposed changes should be discussed by EDG prior to presentation at Board.	<p>Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.</p>	<p>Annex 8 Section 3.37 “These so shall be amended only if:</p> <p>a notice of motion under SO 3.16 has been given; and</p> <p>no fewer than half the total of the Trust’s Non-Executive Directors vote in favour of amendments; and</p> <p>at least two-thirds of the Board of Directors are present; and</p> <p>the variation proposed does not constitute any applicable statutory provision on direction, the Constitution or the Terms of Authorisation, and</p> <p>Subject always to the fact that no change shall be made without the prior consent of the Independent Regulator having first been obtained.</p>	<p>Annex 8 Section 3.37 last paragraph says “... subject always to the fact that no change shall be made without the prior consent of the Independent Regulator having first been obtained.”</p> <p>Note this is different to Constitution (above).</p>
<p><b>Annex 9 Further Provisions</b></p>	Director of Corporate Governance	Depending on the proposed change present to EDG prior to submission to Audit Committee	Amendments to Constitution not required to be presented to FIC as per FIC ToR.	“Review on behalf of the Board the operation of, and proposed changes to .... the Constitution ...” as per AC ToR.	Any proposed changes should be discussed by EDG prior to presentation at CoG or Board.	<p>Constitution: 45.1.1 “more than half of the members of CoG of the Trust voting approve the amendment” and 45.1.2</p> <p>Constitution: 45.3 and 45.4 cover</p>	Constitution: 45.1.2 “more than half of the members of the Board of Directors of the Trust voting to approve the amendments”.	Constitution: 45.5 “Amendments by the Trust of its Constitution are to be notified to Monitor (now NHSI). For the avoidance of doubt Monitor’s functions do not include a

Document	Lead Director	EDG (prior to FIC and/or AC)	Finance & Investment Committee	Audit Committee	EDG (prior to CoG and/or Board)	Council of Governors	Board	NHS Improvement
						amendments made to the Constitution in relation to powers and duties of CoG. These then have to go to AMM for <u>members'</u> approval. This requires more than half of the members voting to approve.		power or duty to determine whether or not the Constitution, as a review of the amendments, accord with Section 7 of the 2006 Act".

**Key:**

- EDG – Executive Directors’ Group
- FIC - Finance & Investment Committee AC - Audit Committee
- CoG - Council of Governors
- NHSi - NHS Improvement
- ToR - Terms of Reference
- SO - Standing Orders

Updated 07.07.17 SKRS  
 JD/MS/jch/09.03.17 (A3)/updated 09.05.17  
 Governance Overview March 2017 MS-JD

## Summary of proposed amendments to the Sheffield Health and Social Care NHS FT Constitution and supporting documents

Document	Paragraph reference no.	Proposed changes	Reason for proposed change
All	Various		The documents have been updated in relation to formatting, nomenclature and to ensure consistency when reading across from one section to others including corrections to references to other section numbers where necessary.  Any reference to Monitor updated.
Constitution	20	Remove “pecuniary, personal or family interest” and replace with “financial, non- financial professional, non-financial personal or indirect interest”	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS
Constitution	27	Remove reference to “initial” within this section.	Refers to original establishment of NHS FT.
Constitution	34	Add 34.5 “if a Director has a financial, non- financial professional, non-financial personal or indirect 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 Board, the Director shall disclose that interest to the members of the Board of Directors as soon as they become aware of it. “  And amend Section 34.6 to “The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS

Document	Paragraph reference no.	Proposed changes	Reason for proposed change
		of the matter in respect of which an interest has been disclosed.”	
Constitution	40	Remove reference to <u>Audit &amp; Assurance</u> Committee	Ensure consistency with Trust Board Committee titles.
Annex 1		No change	
Annex 2		No Change	
Annex 3		No Change	
Annex 4		No Change	
Annex 5		Remove reference to Monitor	Refer to NHS Improvement
Annex 6	2	Remove this section	Remove section 2 “Transitional Provision” as no longer required, however, keep section number in and state “Section not used” to ensure numbering and referencing not compromised
Annex 6	4	Title of this section to read “Termination or Suspension of Tenure”	Added “suspension” in the title as the text, previously approved by COG and Board, describes process for both termination and suspension of Governors
Annex 6	4	Include return of all Trust property and ID badge.	
Annex 7	2.7.5	Change 2.7.5 to “On occasions when the Chair declares a financial, non-financial professional, non-financial personal or indirect interest that prevents them from taking part in the consideration or discussion of a matter before the Council of Governors.”	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS
Annex 7	2.9.5	Change 2.9.5 to “on occasions when the Chair and Vice Chair declare a financial, non- financial professional, non-financial personal or indirect interest that prevents them from taking part in the consideration or discussion of a matter before the Council of Governors.”	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS

Document	Paragraph reference no.	Proposed changes	Reason for proposed change
Annex 7	3.27	Change 3.27 to “A Governor who has declared a non-financial professional, non- financial personal or indirect interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a financial interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.”	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS
Annex 7	5	Remove any reference in this section from “pecuniary, non-pecuniary, personal or family interest” and replace with “financial, non- financial professional, non-financial personal or indirect interest” as necessary.	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS
Annex 7	6.2	Change 6.2 to “Interest of Governors in Contracts – if it comes to the knowledge of a Governor that a contract in which they have any financial interest not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Company Secretary of the fact that they are interested therein. In the case of married persons or persons living together as partners or any other indirect interest, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.”	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS
Annex 8	1	Remove reference to Quality Assurance Committee (QAC)	Reference to QAC not required in this section as details of QAC and its Terms

Document	Paragraph reference no.	Proposed changes	Reason for proposed change
			of Reference are made in later sections of the document
Annex 8	4.4	Remove reference to “it’s sub-committees”	Remove this reference as the Board does not have any sub-committees
Annex 8	5.8	Remove some text and referrer to Terms of Reference	To ensure consistency with the section re Audit Committee and Remuneration and Nomination Committee take out details of the roles and responsibilities of QAC, FIC and WODC and refer to Terms of Reference
Annex 8	5.9	Change 5.9 to “The Board have delegated authority to the Executive Directors Group (EDG) to ratify all policies and policy amendments with the exception of those policies which have strategic content. Policies with strategic content will be referred by EDG to the Board for final approval. Details of the delegated powers are included in the Scheme of Reservation and Delegation.”	To update this section to ensure compliance with the delegation as agreed by Board at its April 2017 meeting
Annex 8	6, 7 and 8	Various changes to ensure compliance with new guidance	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS
Annex 8	9.18	Moved detail of delegated limits to SO Appendix A.	
Annex 9	1.1.6	Added in section re Disclosure and Baring Service	To ensure consistency with SO for COG
Annex 9	5.1.2	Take out “pecuniary” and replace with “financial”	To ensure consistency with new NHS England (NHS E) and NHS Improvement (NHS I) guidance on Managing Conflicts of Interests in the NHS
Annex 9	5.1.4	Take out “Criminal Records Bureau” and replace with “Disclosure and Baring Service”	To update re replacement requirements