



**WARRINGTON AND HALTON  
TEACHING HOSPITALS  
NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

**CONSTITUTION  
(v4)**

**Commencement Date: 24 November 2021**

## Version Control Schedule

Version	Date	Section	Page	Amendment
2	21.3.13			Amendments arising from Health and Social Care Act that came into force on 1 April 2013.  Constitution was approved by both the Board and Council to come into force on 1 April 2013 to coincide with requirements of the Health and Social Care Act 2012.
3.0	25/09/2014			Amendment to clarify requirement that the Non-Executive Chair need not be a member of a Public constituency and therefore can be appointed outside of the public constituent areas.
3.1	28.1.16	28.5	17	Clause amended to remove the disqualification criterion for a person becoming or continuing as a director on account of being a director of another NHS FT or NHS Body. (Any such appointment would remain subject to consideration by the relevant nomination committee and for NED appointments, the CoG in addition). Approved by the Board 27.1.16 and the Council on 28.1.16.
3.1	28.1.16	4.14	94	Insertion of a new clause 4.14a. The effect of the insertion to clarify that directors may join meetings of the Board by electronic means. Approved by the Board 27.1.16 and the Council on 28.1.16.
3.2	20.10.16	Annex 1	26	Public Constituency no. 16 renamed as 'Rest of England and Wales' excluding the areas listed in 1-15 (defined as having an England or Wales postcode) approved 20.10.17 by Council
3.3	19.1.17	Annex 9	106	Creation of new Lead Governor Role approved by Council 19 Jan 2017
3.4	20.7.17	4	6	Changes to Register of Members approved 20.7.17 by Council
	20.7.17		0	Change to front cover to incorporate branding
	20.7.17	34	20	Change to Registers to reflect the non-publication of members' details on register – in accordance with new General Data Protection Legislation effective May 2018 approved by Council on 20.7.17
3.5	28.03.2018	Annex 1	29	Merge Area 15 with the 'Rest of England and Wales' and correspondingly increase the number of Governors affiliated with the 'Rest of England and Wales' from one to two Governors. Approved by the Council 15.02.2018 and by the Board 28.03.2018
3.5	28.03.2018	Annex 3	33	Change to the existing public partners. Approved by the Council 15.02.2018 and by the Board 28.03.2018
3.5	28.03.2018	Annex 3	34	Amendment to the table to the table of Elected Governors to reflect merger of area 15 with Rest of England Approved by the Council 15.02.2018 and by the Board 28.03.2018
3.6	27.03.2019	12.1-12.6	14	Amendment to Council of Governors Tenure

3.6	27.03.2019	25,5	17 + 18	Amendment to Non-Executive Directors Tenure
3.6	27.03.2019	Annex 5	63	Amendment to Annex 5, Section 12 – Eligibility to be a Governor
3.6	27.03.2019	Annex 5	64	Amendment to Termination of Office and removal of Governors
3.6	27.03.2019			Replacement of pronouns replacing s/he or his/her with they or their
3.7	30.05.2019	Annex 7	98	Amendment to Board of Directors Standing Orders (section 6.1) Appointment of Committees
3.8	14.11.2019		2	Interpretations and definitions- amendment to name
3.8	14.11.2019	Section 2		Name – amendment to name
3.8	14.11.2019	Section 4		Membership – amendment to name
3.8	14.11.2019	Part 7		Elections – amendment to name
3.8	14.11.2019	Annex 5B		Governors – amendment to name
3.8	14.11.2019	Cover		Amendment to name, replacement of brand
3.9	25.11.2020	25.5		Amendment to Non-Executive Directors Tenure
3.10	27.01.2021	21.6	17	Board of Directors – composition
3.10	27.01.2021	Annex 5B	72	ANNEX 5B – Governors' Code of Conduct
3.11	31.03.2021	Annex 1	30	ANNEX 1 Public Constituency
3.11	31.03.2021	Annex 3	33	Composition of the Council of Governors
3.12	29.09.2021	Annex 8	110	Amendment to the description of Lead Governor Role & addition to the role of Deputy Lead Governor.
4.0	24.11.2021	Section 14, Annex 5, Annex 5B	16, 63, 64, 67, 75	Amendments to the description of Governor responsibilities

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## **WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST CONSTITUTION**

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# WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST

## (A PUBLIC BENEFIT CORPORATION)

### CONSTITUTION

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the National Health Service Act 2006 As amended by the Health and Social Care Act 2012.

References in this Constitution to legislation include all amendments, replacements, or re-enactments made.

References to legislation include all regulations, statutory guidance or directions.

Headings are for ease of reference only and are not to affect interpretation.

Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.

#### 1. Interpretation and Definitions

##### 1.1 In this Constitution:

“the 2006 Act”	Means the National Health Service Act 2006.
“the 1977 Act”	Means the National Health Service Act 1977.
“the 2012 Act”	Means the Health and Social Care Act 2012.
“applicant NHS Trust”	Means the North Cheshire Hospitals NHS Trust which made the application to become an NHS Foundation Trust.
“area of the Trust”	Means the totality of all the areas specified in Annex 1 as areas for a public constituency.
“Board of Directors”	Means the Board of Directors as constituted in accordance with this Constitution.
“The Council of Governors”	Means the Council of Governors as constituted in accordance with this Constitution.
“Accounting Officer”	Is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

“financial year”	<p>a) the period beginning with the date on which the Trust was authorised under the 2006 Act and ending with the next 31<sup>st</sup> March; and</p> <p>b) each successive period of twelve months beginning with 1<sup>st</sup> April.</p>
“Governors Code of Conduct”	Means the members of the Governors’ Council code of conduct set out in Annex 5B.
“Monitor”	Means the body corporate known as Monitor as provided by Section 61 of the 2012 Act.
“Local Authority Governor”	Means a member of the Council of Governors appointed by one or more of the local authorities specified in Annex 3.
“Member”	Means a member of the Trust.
“NHS Body”	means an NHS body as defined by Section 275 of the 2006 Act.
“Partnership Governor”	Means a member of the Council of Governors appointed by a partnership organisation specified in Annex 3.
“Public Governor”	Means a member of the Council of Governors elected by the members of the Public Constituency.
“Trust Secretary”	Means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary.
“Secretary of State”	Means the Secretary of State for Health
“Staff Governor”	Means a member of the Council of Governors elected by the members of the staff constituency.
“the Trust” or “the Foundation Trust”	Means the Warrington and Halton Teaching Hospitals NHS Foundation Trust.

“voluntary organisation” Means a body, other than a public or local authority, the activities of which are not carried out for profit.

## 1. **Name**

1.1 The name of the Foundation Trust is **Warrington and Halton Teaching Hospitals NHS Foundation Trust**.

## 2. **Principal purpose**

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

2.3 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.

2.3 The Trust may provide goods and services for any purposes related to: -

2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

2.3.2 the promotion and protection of public health.

2.4 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.

## 3. **Powers**

3.1 The powers of the Trust are set out in the 2006 Act.

3.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

3.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

## 4. **Membership and constituencies**

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

4.1.1 A Public Constituency.

4.1.2 A Staff Constituency.

4.2 Members' Data and Rights



- 4.2.2 The names of members shall be entered in the register of members and the member shall be asked to give their consent at time of registration for their personal data to be entered onto this register.
- 4.2.3 The Trust is a Foundation Trust, the Constitution of which specifies that the Trust must have a membership. Warrington and Halton Teaching Hospitals NHS Foundation Trust has a membership that comprises two constituencies: The Public constituency and the Staff constituency. The Trust will enter your information into a secure database and will only use your data for the following purposes:
- To conduct elections to our Council of Governors, which are elected by either public or staff members
  - To produce an annual membership report as prescribed by Monitor, our Regulator, under the Annual Reporting Manual. This report describes the membership database in its entirety and does not identify individuals.
- 4.2.4 We will not share your data with any person or organisation beyond secure transfer to our independent database provider which will, in turn, not share any data without specific authority from the Foundation Trust.

### 4.3 **Members Individual Rights**

The Foundation Trust commits that members:

- Have the right to be informed
- Have the right of access to their information
- Have the right to rectify any personal data held in the membership database
- Have the right to request that their record is deleted from the membership database
- Have the right to request exclusion from processing, such as for the election of governors, the receipt of correspondence or the production of the annual membership report
- Have the right to object to any element of how we hold and process individual data
- Have the right not to be subject to automated decision-making including profiling.

#### 4.3.1 **Lawful basis for processing personal data**

The Foundation Trust is required, under its Constitution, to have a membership. Members will be recruited through multiple means and will be advised during recruitment about the processing of their data. Members' data will be processed securely and only for the purposes described above.

#### 4.3.2 **Consent**

Upon membership application members will be asked to give their consent to have their data processed as described. If members do not give their consent then their application will be processed for subscription as requested

but their data will not be further accessed for elections, correspondence or for membership reports.

### **4.3.3 Children**

To become a Foundation Trust member the minimum age is 12. Young people aged between 12 and 16 applying for membership will be required to indicate that they have the consent of their parent or guardian to join the membership and provide the parent/guardian contact details. The young person's membership will not be processed until written consent has been received by the parent/guardian giving consent.

**4.4** Members may attend and participate in members meetings, vote in elections to, and stand for election to, the Council of Governors, and take such other part in the affairs of the Trust as is provided for in this Constitution.

### **4.5 Eligibility for membership**

Members shall:

4.5.1 Be 12 years of age or over; and

4.5.2 Meet the criteria for membership of the Public Constituency or the Staff Constituency.

#### **4.6 Representative membership**

4.6.1 The Trust shall at all times take steps to ensure that its membership is representative of those eligible for membership. To this end, the Trust shall comply with its Membership Strategy.

4.6.2 The Membership Strategy shall be reviewed from time to time by the Council of Governors, and at least every three years.

### **4.7 The Council of Governors shall present to each Annual Members Meeting:**

4.7.1 a report on steps taken to ensure that the Trust's membership is representative of those eligible for membership;

4.7.2 any changes to the Membership Strategy.

4.8 The Board of Directors will prepare and approve the first membership strategy.

### **Conditions of membership**

4.9 Members:

4.9.1 Will not receive payment, or any fees associated with becoming or remaining a member of the Trust;

- 4.9.2 Will not receive any preferential care or treatment as a consequence of being a member;
- 4.9.3 Can resign their membership at any time;
- 4.9.4 Can be members of more than one Trust.

5. **Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust, subject to the provisions of paragraph 7.5 below.

6. **Public Constituency**

6.1 An individual aged 12 years or above 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, unless otherwise disqualified in accordance with this Constitution.

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

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

7. **Staff Constituency**

7.1 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:

7.1.1 They are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

7.1.2 They have been continuously employed by the Trust under a contract of employment for at least 12 months.

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

7.3 The Staff Constituency shall be divided into five 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.

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

**Automatic membership by default – staff**

7.5 An individual who is:

7.5.1 Eligible to become a member of the Staff Constituency, and

7.5.2 Invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so in writing.

## **8. Restriction on membership**

- 8.1 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.
- 8.2 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.
- 8.3 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 8.

## **9. Members' Meetings**

- 9.1 The Trust is to hold a members meeting (the "Annual Members Meeting") within nine months of the end of each financial year. Members meetings may also be convened at other times in accordance with paragraph 9.3 below.
- 9.2 Members meetings are open to all members of the Trust, Governors, Directors, representatives of the Trust's financial auditor and members of the public.
- 9.3 All members meetings, including the Annual Members Meeting shall be convened by the Trust Secretary by order of the Council of Governors.
- 9.4 The Council of Governors shall decide where members meetings are to be held and may also for the benefit of members arrange for the Annual Members Meeting to be held in different venues each year.
- 9.5 At the Annual Members Meeting:
  - a) The Board of Directors shall present to members:
    - i) The annual accounts.
    - ii) Any report of the financial auditor.
    - iii) Any report of any other external auditor of the Trust's affairs.
    - iv) Forward planning information for the next financial year.
  - b) The Council of Governors shall present to the members:

- i) a report on steps taken to secure that (taken as a whole) the actual membership of its Public Constituency and of the classes of the Staff Constituency are representative of those eligible for such membership.
  - ii) The progress of the Membership Strategy.
  - iii) Any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors.
- c) The results of the election and appointment of Governors and the appointment of Non-Executive Directors will be announced.

9.6 Notice of members meetings is to be given:

- a) By notice to all members.
  - b) By notice prominently displayed at the head office and at all of the Trust's places of business; and
  - c) By notice on the Trust's website,
- at least 14 clear days before the date of the meeting. The notice must:
- d) Be given to the Council of Governors and the Board of Directors and to the financial auditor.
  - e) Give the time, date and place of the meeting; and
  - f) Indicate the business to be dealt with at the meeting.

9.7 Before a members meeting can do business there must be a quorum present. Except where this Constitution says otherwise a quorum is one member present from each of the Trust's Constituencies.

9.8 The Trust may make arrangements for members to vote by post, or by using electronic communications.

9.9 It is the responsibility of the Council of Governors, the Chair of the meeting and the Trust Secretary to ensure that at members meetings:

- a) The issues to be decided are clearly explained.
- b) Sufficient information is provided to members to enable rational discussion to take place.

9.10 The Chair of the Trust, or in his absence the Deputy Chair of the Trust, or in his absence one of the other Non-Executive Directors shall preside at all members' meetings of the Trust. If neither the Chair nor the Deputy Chair,

nor any other Non-Executive Directors are present, the meeting shall stand adjourned.

- 9.11 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 Council of Governors determines. 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 during the meeting is to be a quorum.
- 9.12 A resolution put to the vote at a members' meeting shall be decided upon by a poll.
- 9.13 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting shall have a second or casting vote.
- 9.14 The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

#### **10. Council of Governors - composition**

- 10.1 The Trust shall have a Council of Governors, which shall comprise both elected and appointed Governors.
- 10.2 The composition of the Council of Governors is specified in Annex 3.
- 10.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency. The number of Governors to be elected by each Constituency, or, where appropriate, by each class of each Constituency, is specified in Annex 3.

#### **11. Council of Governors – election of Governors**

- 11.1 Elections for elected members of the Council of Governors shall be conducted on a first past the post basis in accordance with the Model Rules for Elections, as may be varied from time to time.
- 11.2 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 4.
- 11.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 45 of the Constitution (amendment of the constitution).
- 11.4 An election, if contested, shall be by secret ballot.
- 11.5 The Board of Directors shall approve a process for agreeing the appointment of Local Authority Governors and Partnership Governors. The approved

process shall be adopted by the Trust Secretary so as to confirm the appointments.

## **12. Council of Governors - tenure**

- 12.1 Governors may hold office for a period of up to three years. A Governor shall be eligible for re-election or re-appointment at the end of their initial term, for two further terms.
- 12.2 An Elected Governor shall cease to hold office if he or she ceases to be a member of the constituency or class by which he or she was elected.
- 12.3 Subject to paragraph 12.5 below, an Elected Governor shall be eligible for re-election at the end of their term.
- 12.4 Subject to paragraph 12.5 below, an Appointed Governor shall be eligible for reappointment at the end of his or her term.
- 12.5 Elected Governors and Appointed Governors may hold office for a maximum of 9 consecutive years.
- 12.6 Subject to any provision in this Constitution in respect of eligibility or disqualification of Governors, once an elected Governor has reached their maximum term or has been removed under paragraph 13, they shall only be eligible for appointment again after a period of three (3) years.

## **13. Council of Governors – disqualification and removal**

- 13.1 The following may not become or continue as a member of the Council of Governors:
  - 13.1.1 A person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged.
  - 13.1.2 A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
  - 13.1.3 A person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 13.3 Further provisions as to the circumstances in which an individual may not become, or continue as, a member of the Council of Governors are set out in Annex 5.



13.4 Provision for the removal of Governors is set out in Annex 5.

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

14.1 The general duties of the Council of Governors are:

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

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

14.1.3 To undertake the Roles and Responsibilities required of Governors as set out in Annex 5.

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

**15. Council of Governors – Meeting of Governors**

15.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24 or paragraph 25 below) or in his absence the Deputy Chair (appointed in accordance with the provisions of paragraph 24 or 25 below), shall preside at meetings of the Council of Governors.

15.2 Meetings of the Council of Governors shall be open to members of the public, subject to paragraph 15.3 and 15.4 below;

15.3 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting for special reasons.

15.4 The special reasons referred to in paragraph 15.3 include, but are not limited to, where the Council of Governors considers that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted.

15.5 The Chair may exclude any member of the public from the meeting of the Council if they consider that they are interfering with or preventing any conduct of the meeting.

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

**16. Council of Governors – Standing Orders**

The Standing Orders for the practice and procedure of the Council of Governors are attached at Annex 6.

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

17.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of the Trust may refer a question as to whether the Trust has failed or is failing:

17.1.1 to act in accordance with its constitution; or

17.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

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

**18. Council of Governors – conflicts of interest of Governors**

18.1 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 he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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

19.1 The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust.

**20. Council of Governors – further provisions**

20.1 Further provisions with respect to the Council of Governors are set out in Annex 5.

**21. Board of Directors – composition**

21.1 The Trust is to have a Board of Directors, which shall comprise of both Executive and Non-Executive Directors.

21.2 The Board of Directors shall comprise as a minimum of:

21.2.1 a Non-Executive Chair.

21.2.2 five other Non-Executive Directors; and

21.2.3 five Executive Directors.

- 21.3 The number of members of the Board of Directors may be increased, provided always that at least half the Board, excluding the Chair, comprises Non-Executive Directors.
- 21.4 One of the Executive Directors shall be the Chief Executive.
- 21.5 The Chief Executive shall be the Accounting Officer.
- 21.6 One Non-Executive Director will be appointed from the Senior Management Team of the University of Chester in line with the Trust's strategy. The appointment would form part of a Memorandum of Understanding (MOU) with the University of Chester. In the event the MOU is disestablished, the role of the Non-Executive Director would also be disestablished.
- 21.7 One of the Executive Directors shall be the Finance Director.
- 21.8 One of the Executive Directors shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 21.9 One of the Executive Directors is to be a registered Nurse or a registered Midwife.

## **22. Board of Directors – general duty**

- 22.1 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.

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

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

23.1.1 With the exception of the Non-Executive Chair<sup>1</sup>, they are a member of the Public Constituency and

23.1.2 They are not disqualified by virtue of paragraph 28 below.

## **24. Board of Directors – appointment and removal of Chair, Deputy Chair and other Non-Executive Directors**

- 24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors and shall appoint one of the Non-Executive Directors as the Deputy Chair of the Trust.

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<sup>1</sup> Approved by the Board of Directors on 4 September 2014 and by the Council of Governors on 25<sup>th</sup> September 2014.

- 24.2 Removal of the Chair, Deputy Chair or another Non-Executive Director shall require the approval of three quarters of the members of the Council of Governors.
- 24.3 The initial Chair, Deputy Chair and the initial Non-Executive Directors are to be appointed in accordance with paragraph 25 below.
25. **Board of Directors – appointment of initial Chair, Deputy Chair and initial other Non-Executive Directors**
- 25.1 The Chair of the applicant NHS Trust shall be appointed as the initial Chair of the Trust if he wishes to be appointed.
- 25.2 The power of the Council of Governors to appoint the other Non-Executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the Non-Executive Directors including the Deputy Chair of the applicant NHS Trust (other than the Chair) who wish to be appointed.
- 25.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 23 above (other than disqualification by virtue of paragraph 28 below) do not apply to the appointment of the initial Chair and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph.
- 25.4 An individual appointed as the initial Chair or as an initial Non-Executive Director including Deputy Chair in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chair or (as the case may be) Non-Executive Director of the applicant NHS Trust; but if, on appointment, that period is less than twelve months, they shall be appointed for twelve months.
- 25.5 Non-Executives are appointed for an initial period of up to three years. Appointments may be renewed at the end of the period of office, subject to the recommendations of the Council of Governors Nomination and Remuneration Committee and approval of the Council of Governors, for a further period up to three years. Non-Executives may serve up to a maximum of 9 years
26. **Board of Directors – appointment and removal of the Chief Executive and other Executive Directors**
- 26.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 26.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 26.3 The initial Chief Executive is to be appointed in accordance with paragraph 27 below.

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

**27 Board of Directors – appointment of initial Chief Executive**

27.1 The Chief Executive of the applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if s/he wishes to be appointed.

27.2 The appointment of the Chief Executive of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

**28. Board of Directors - disqualification**

28.1 A person may not become or continue as a member of the Board of Directors if:

28.1 They have been adjudged bankrupt or their estate has been sequestrated and (in either case) has not been discharged;

28.2 They are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

28.3 They have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

28.4 They have within the preceding five years been convicted in the British Isles of any offence and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her;

28.5 They are a member of the Council of Governors, or a Governor of another NHS Foundation Trust or any other NHS Body;

28.6 They have been removed from office as a Governor of the Trust in accordance with the procedure for removal set out in Annex 5;

28.7 They are a spouse, partner, parent or child of a member of the Council of Governors or Board of Directors;

28.8 They are a member of a local authority's scrutiny committee covering health matters;

28.9 On the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the Trust's Executive Director responsible for Human Resources;

28.10 They have or have been the subject of a Sexual Offences Prevention Order, a Foreign Travel Order or a Risk of Sexual Harm Order made under the provisions of the Sexual Offences Act 2003;

- 28.11 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 28.12 They are incapable by reason of mental disorder, illness or injury of managing or administering their property and affairs;
- 28.13 They have had their name removed from any list maintained pursuant to Parts 4, 5, 6 or 7 of the NHS Act 2006 and/or Regulations made under those Parts, and has not subsequently had their name included on such a list, and due to the reason(s) for such removal, they are not considered suitable by the Trust's Executive Director responsible for Human Resources;
- 28.13 In the case of a Non-Executive Director, they have refused without reasonable cause to fulfil any training requirements established by the Board of Directors;
- 28.14 They have refused to sign and deliver to the Trust Secretary a statement in the form specified by the Board of Directors confirming acceptance of the Trusts' Code of Conduct for Directors.
- 28.15 In the case of a Non-Executive Director (excluding the Non-Executive Chair)<sup>2</sup>, they are no longer a member of the Public Constituency;
- 28.16 They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 28.17 They are 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 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. Board of Directors – meetings**

- 29.1 Meetings of the Board of Directors shall be held in public. Members of the public may be excluded from a meeting for special reasons in accordance with Annex 7.

## **30. Board of Directors – Standing Orders**

- 30.1 The Standing Orders for the practice and procedure of the Board of Directors are in accordance with Annex 7.

## **31. Board of Directors – conflicts of interest of Directors**

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<sup>2</sup> Approved by the Board of Directors on 4 September 2014 and by the Council of Governors on 25<sup>th</sup> September 2014.

- 31.1 The duties that a director of the Trust has by virtue of being a director include:
- 31.1.1 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
  - 31.1.2 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.
- 31.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if –
- 31.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 31.2.2 The matter has been authorised in accordance with the constitution.
- 31.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 31.4 In sub-paragraph 31.1.2, “third party” means a person other than:
- 31.4.1 the Trust; or
  - 31.4.2 a person acting on its behalf.
- 31.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director shall declare the nature and extent of that interest to the other directors.
- 31.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 31.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 31.8 A director is not required to declare an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 31.9 A director need not declare an interest –
- 31.8.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 31.8.2 If, or to the extent that, the directors are already aware of it; or
  - 31.8.3 It concerns terms of the director’s appointment that have been or are to be considered:
    - 31.8.3.1 by a meeting of the Board of Directors; or

31.8.3.2 by a committee of the directors appointed for the purpose under the Constitution.

**32. Board of Directors – remuneration and terms of office**

32.1 The Council of Governors at a 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.

32.2 The Board of Directors shall establish a committee of Non-Executive Directors to decide the remuneration and allowances and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

**33. Voting**

33.1 All decisions of Governors; Directors and Committees shall be by a simple majority of those present at a quorate meeting unless stated otherwise in this Constitution.

**34. Registers**

34.1 The Trust shall have:

34.1.1 Where the member gives consent, upon registration, a register of members showing, in respect of each member, the Constituency to which he belongs and where there are Classes within it, the Class to which he belongs;

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. Registers – inspection and copies**

35.1 The Trust shall *NOT* 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:

*The production of the annual membership report where the data to be published will be arranged by constituency population and the demographic diversity of the membership as an entirety.*

**36. Documents available for public inspection**

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



- 36.1.1 a copy of the current Constitution;
  - 36.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 36.1.3 a copy of the latest annual report.
- 36.2 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:
- 36.2.1 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;
  - 36.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 36.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 36.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 36.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 36.2.6 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 (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 36.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 36.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 36.2.9 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
  - 36.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

365.3 Any person who requests a copy of, or extract from, any of the above documents shall be provided with a copy.

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. Auditor**

37.1 The Trust shall have an auditor.

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

**38. Audit Committee**

38.1 The Board of Directors shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

**39. Accounts**

39.1 The Trust shall keep proper accounts and proper records in relation to the accounts.

39.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

39.2 The accounts are to be audited by the Trust's auditor.

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

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

**40. Annual Report, forward plans and non-NHS work**

40.1 The Trust shall prepare an Annual Report and send it to the Monitor.

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

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

40.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

40.5 Each forward plan must include information about:

- 40.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
- 40.5.2 the income it expects to receive from doing so.
- 40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must:
  - 40.6.1 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
  - 40.6.2 notify the directors of the Trust of its determination.
- 40.7 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 of the Trust voting approve its implementation.
- 41. Presentation of the annual accounts and reports to the Council of Governors and Members**
  - 41.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors.
    - 41.1.1 The annual accounts.
    - 41.1.2 Any report of the auditor on them.
    - 41.1.3 The annual report.
  - 41.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
  - 41.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.
- 42 Trust Secretary**
  - 42.1 The Trust shall have a Trust Secretary who may be an employee. The Trust Secretary may not be a Governor, or the Chief Executive or the Finance Director.
  - 42.2 The Trust Secretary's functions shall include:
    - 42.2.1 Acting as Trust Secretary to the Council of Governors and the Board of Directors, and any committees;

- 42.2.2 Attending all members meetings, meetings of the Council of Governors and the Board of Directors and keeping the minutes at those meetings;
  - 42.2.3 Maintaining and keeping up to date the register of members and other registers and books required by this Constitution;
  - 42.2.4 Taking charge of the Trust's seal;
  - 42.2.5 Publishing to members in an appropriate form relevant information about the Trust's affairs;
  - 42.2.6 Preparing and sending to Monitor and any other statutory body all returns which are required to be made;
- 42.3 The Trust Secretary shall be appointed and removed by the Board of Directors in consultation with the Council of Governors.
- 42.4 The Board of Directors of the applicant NHS Trust shall appoint the first Trust Secretary of the Trust.

### **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.

### **44. Mergers, Acquisition, Separation, Dissolution and Significant Transactions**

- 44.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 44.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust approve entering into the transaction.
- 44.3 For the purposes of this paragraph:
  - 44.3.1 "Transaction" may be either an investment or a divestment.
  - 44.3.2 A transaction is "significant" if its value equates to 25% of either the Foundation Trust's Gross Assets, Income or Gross Capital (inclusive of the transaction), calculated with reference to the Foundation

Trust's opening Balance Sheet for the Financial Year in which approval is being sought.

- 44.4 If more than half of the members of the Council of Governors voting at a meeting of the Council decline to approve a significant transaction or any part of it, the meeting must provide an agreed written Statement of Reasons for its rejection to the Board of Directors

#### **45. Amendment of the constitution**

- 45.1 The Trust may make amendments to its constitution if:

45.1.1 more than half of the members of the Board of Directors of the Trust voting approve the amendments; and

45.1.2 more than half of the members of the Council of Governors of the Trust voting approve the amendments.

- 45.2 Amendments made under paragraph 45.1 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.

- 45.3 If an amendment is made to the Constitution in relation the powers or duties of the Council of Governors;

45.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

45.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.

- 45.4 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.

- 45.5 Amendments made to the Constitution shall be notified to Monitor in accordance with the 2012 Act.

#### **46. Dispute resolution procedures**

- 46.1 Every unresolved dispute which arises out of this Constitution between the Trust and:

46.1.1 a member;

46.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

46.1.3 any person bringing a claim under this Constitution

except where otherwise specified in this constitution or the standing orders the unresolved dispute shall be determined by the Trust Secretary. There will be a right of appeal to the Chair, and if the dispute remains unresolved there will be a right of appeal to the Senior Independent Director whose decision shall be final and binding.

46.2 In the event that a dispute is referred to the Chair under paragraph 46.1 and the Chair considers that he has a perceived or real interest in the outcome of that dispute and that the dispute would be better resolved externally, then the Chair may refer the dispute for resolution by arbitration under the Arbitration Act 1996 (as amended or re-issued from time to time). The arbitrator's decision will be binding and conclusive on all parties.

#### **47 Indemnity**

47.1 The Trust Secretary and members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their duties for the Trust, save where they have acted recklessly, and the Trust shall take out and maintain appropriate insurance against such risks.

#### **48 Dissolution of the Trust**

The Trust may not be dissolved except by order of the Secretary of State, in accordance with the 2006 Act as amended by the 2012 Act.

**ANNEX 1 – THE PUBLIC CONSTITUENCY**  
**(Paragraphs 6.1 and 6.3)**

The Public Constituency consists of the Local Government electoral wards specified in the table below.

Area	Constituency	Proposed number of elected Governors
1	Warrington North	5
2	Warrington South	5
3	Runcorn	4
4	Widnes	4
5	Rest of England	1
<b>Total</b>		<b>19</b>

The minimum number of members required for each area of the Public Constituency is in the table above, which is derived from 25% of the Trust's target membership for each area in the first year of its authorisation. Although the two areas in Widnes have a higher population, due to the proportion of patients using an adjacent acute trust the minimum membership has remained at the same level as other areas. The Trust will continue to take all reasonable steps to secure that (taken as a whole) the actual membership of any Public Constituency will be representative of those eligible for such membership.

## **ANNEX 2 – THE STAFF CONSTITUENCY (Paragraphs 7.3 and 7.4)**

The Staff Constituency is to be divided into 5 classes as follows:

- a) Medical Staff.
- b) Nursing & Midwifery Staff.
- c) Support Staff.
- d) Clinical Scientist or Allied Health Professionals.
- e) Estates, administrative and managerial staff.

a) **Medical Staff**

The members of the Medical Staff Class are individuals who are members of the Staff Constituency who are fully registered persons within the meaning of the Medicines Act 1956, who hold a licence to practice and have a post practising within the Trust.

b) **Nursing & Midwifery Staff**

The members of the Nursing and Midwifery Staff Class are members of the Staff Constituency who hold a professional registration with the Nursing and Midwifery Council and who practise as a nurse or a midwife within the Trust.

c) **Support Staff**

The members of the Support Staff Class are members of the Staff Constituency who do not fall within paragraphs a), b) or d) but provide services in direct support of registered practitioners or work within Patient Services.

d) **Clinical Scientist or Allied Health Professionals**

The members of the Clinical Scientist or Allied Health Professional Class are individuals who are members of the Staff Constituency who are registered clinical or health professionals who practise as such within the Trust, and who do not fall within paragraphs a) or b).

e) **Estates, Administrative and Managerial Staff**

The members of the Estates, Administration and Managerial Class are any members of the Staff Constituency who do not come within paragraphs a), b), c) or d).

Members of the Trust who are members of the Staff Constituency are to be individuals:

- a) Who are employed under a contract of employment by the Trust which has no fixed term, or has a fixed term of at least 12 months; or



- b) Have been continuously employed by the Trust under a contract of employment for at least 12 months.

Below is the minimum membership of each class of the Staff Constituency:

<b>Class</b>	<b>Minimum number of members</b>
Class a) – Medical Staff	60
Class b) – Nursing and Midwifery Staff	60
Class c) – Support Staff	60
Class d) - Clinical Scientist or Allied Health Professionals	60
Class e) - Estates, administrative and managerial staff	60
<b>Total</b>	<b>300</b>

## ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

### (Paragraphs 10.2 and 10.3)

The Council of Governors consists of:

1. Partnership Governors appointed by:
  - a) Local Authorities for an area which includes the whole or part of an area of a public constituency;
  - b) Partnership organisations, including local Universities and voluntary organisations;
2. Elected Governors elected by:
  - a) Members of the Public Constituency;
  - b) Individuals within each class of the Staff Constituency.

More than half of the members of the Council of Governors shall be elected by those in 2a above.

### **Composition**

#### **Partnership Governors**

<b>Partnership Organisations</b>	<b>Number to be appointed</b>
<b>Local Authorities:</b>	
Warrington Borough Council	1
Halton Borough Council	1
Warrington Collegiate (Including one co-opted young person rep)	1
Widnes Vikings	1
Educational Sector: University of Chester	1
Private Sector: Warrington Wolves RFL (Community Foundation)	1
<b>Total Partnership Governors</b>	<b>6</b>

## Elected Governors

Constituency/class electing	Number to be elected
<b>Staff Constituency</b>	
Class a) – Medical Staff	1
Class b) – Nursing and Midwifery Staff	1
Class c) – Support Staff	1
Class d) – Clinical Scientist or Allied Health Professionals	1
Class e) - Estates, administrative and managerial staff	1
<b>Total</b>	<b>5</b>

<b>Public Constituency</b>	
Area 1 Warrington North	5
Area 2 Warrington South	5
Area 3 Runcorn	4
Area 4 Widnes	4
Area 5 Rest of England	1
<b>Total Elected Governors</b>	<b>19</b>
<b>Total Membership of Council of Governors</b>	
<b>Partnership Governors</b>	<b>6</b>
<b>Staff Governors</b>	<b>5</b>
<b>Elected Governors</b>	<b>19</b>
<b>Total</b>	<b>30</b>

## **ANNEX 4 – THE MODEL RULES FOR ELECTIONS (Paragraph 11.2)**

### **Part 1 – Interpretation**

1. Interpretation

### **Part 2 – Timetable for election**

2. Timetable
3. Computation of time

### **Part 3 – Returning Officer**

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

### **Part 4 – Stages Common to Contested and Uncontested Elections**

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

### **Part 5 – Contested Elections**

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

#### **Action to be taken before the poll**

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

#### **The poll**

26. Eligibility to vote
27. Voting by persons who require assistance

28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

### **Procedure for receipt of envelopes**

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

### **Part 6 – Counting the votes**

36. Interpretation of Part 6
37. Arrangements for counting votes
38. The count
39. Rejected ballot papers
40. Equality of votes

### **Part 7 – Final proceedings in contested and uncontested elections**

41. Declaration of result for contested elections
42. Declaration of result for uncontested elections

### **Part 8 – Disposal of documents**

43. Sealing up of documents relating to the poll
44. Delivery of documents
45. Forwarding of documents received after close of the poll
46. Retention and public inspection of documents
47. Application for inspection of certain documents relating to election

### **Part 9 – Death of a candidate during a contested election**

48. Countermand or abandonment of poll on death certificate

### **Part 10 – Election expenses and publicity**

#### **Expenses**

49. Expenses incurred by candidates
50. Expenses incurred by other persons
51. Personal, travelling and administrative expenses

## **Publicity**

- 52. Publicity about election by the corporation
- 53. Information about candidates for inclusion with voting documents
- 54. Meaning of “for the purposes of an election”

## **Part 11 – Questioning elections and irregularities**

- 55. Application to question an election

## **Part 12 – Miscellaneous**

- 56. Secrecy
- 57. Prohibition of disclosure to vote
- 58. Disqualification
- 59. Delay in postal service through industrial action or unforeseen event

## **PART 1 – INTERPRETATION**

### **1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

- “corporation” Means the public benefit corporation subject to this Constitution.
- “election” Means an election by a Constituency, or by a Class within a Constituency, to fill a vacancy among one or more posts on the Council of Governors.
- “the regulator” Means Monitor.
- “the 2006 Act” Means the National Health Service Act 2006

1.2 Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

## **PART 2 - TIMETABLE FOR ELECTION**

### **2. Timetable**

The proceedings at an election shall be conducted in accordance with the following timetable:

<b>Proceeding</b>	<b>Time</b>
Publication of notice of election.	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to Returning Officer.	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates.	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election.	Not later than the twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.

Proceeding	Time
Close of the poll.	By 5.00pm on the final day of the election.

3. **Computation of time:**

3.1 In computing any period of time for the purposes of the timetable:

- a) A Saturday or Sunday.
- b) Christmas Day, Good Friday, or a bank holiday, or
- c) A day appointed for public thanksgiving or mourning.

shall be disregarded and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the Returning Officer be obliged to proceed with the counting of votes on such a day.

3.2 In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

**PART 3 - RETURNING OFFICER**

4. **Returning Officer**

4.1 Subject to rule 58, the returning officer for an election is to be appointed by the corporation.

4.2 Where two or more elections are to be held concurrently, the same Returning Officer may be appointed for all those elections.

5. **Staff**

Subject to rule 58, the Returning Officer may appoint and pay such staff, including such technical advisers, as he considers necessary for the purposes of the election.

6. **Expenditure**

The corporation is to pay the Returning Officer:

- a) Any expenses incurred by that Officer in the exercise of his functions under these rules.
- b) Such remuneration and other expenses as the corporation may determine.



## 7. **Duty of co-operation**

The corporation is to co-operate with the Returning Officer in the exercise of his functions under these rules.

## **PART 4 – STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

### 8. **Notice of election**

The Returning Officer is to publish a notice of the election stating:

- a) The Constituency, or Class within a Constituency, for which the election is being held.
- b) The number of members of the Council of Governors to be elected from that Constituency, or Class within that Constituency.
- c) The details of any nomination committee that has been established by the corporation.
- d) The address and times at which nomination papers may be obtained.
- e) The address for return of nomination papers and the date and time by which they must be received by the Returning Officer.
- f) The date and time by which any notice of withdrawal must be received by the Returning Officer.
- g) The contact details of the Returning Officer; and
- h) The date and time of the close of the poll in the event of a contest.

### 9. **Nomination of Candidates**

9.1 Each candidate must nominate themselves on a single nomination paper.

9.2 The Returning Officer:

- a) Is to supply any member of the corporation with a nomination paper, and
- b) Is to prepare a nomination paper for signature at the request of any member of the corporation.

but it is not necessary for a nomination to be on a form supplied by the Returning Officer.

### 10. **Candidate's particulars**

10.1 The nomination paper must state the candidate's:

- a) Full name.
- b) Contact address in full, and
- c) Constituency, or Class within a Constituency, of which the candidate is a member.

11. **Declaration of Interests**

The nomination paper must state:

- a) Any financial interest that the candidate has in the corporation, and
- b) Whether the candidate is a member of a political party, and if so, which party.

and if the candidate has no such interests, the paper must include a statement to that effect.

12. **Declaration of eligibility**

The nomination paper must include a declaration made by the candidate:

- a) That he is not prevented from being a member of the Council of Governors by the 2006 Act or by any provision of the Constitution; and,
- b) For a member of the Public Constituency, of the particulars of his qualification to vote as a member of that Constituency, or Class within that Constituency, for which the election is being held.

13. **Signature of candidate**

The nomination paper must be signed by the candidate, indicating that:

- a) They wish to stand as a candidate.
- b) Their declaration of interests as required under rule 11, is true and correct, and
- c) Their declaration of eligibility, as required under rule 12, is true and correct.

**14. Decisions as to the validity of nomination**

14.1 Where a nomination paper is received by the Returning Officer in accordance with these rules, the candidate is deemed to stand for election unless and until the Returning Officer:

- a) Decides that the candidate is not eligible to stand.
- b) Decides that the nomination paper is invalid.
- c) Receives satisfactory proof that the candidate has died, or
- d) Receives a written request by the candidate of their withdrawal from candidacy.

14.2 The Returning Officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:

- a) That the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election.
- b) That the paper does not contain the candidate's particulars, as required by rule 10.
- c) That the paper does not contain a declaration of the interests of the candidate, as required by rule 11.
- d) That the paper does not include a declaration of eligibility as required by rule 12, or
- e) That the paper is not signed and dated by the candidate, as required by rule 13.

14.3 The Returning Officer is to examine each nomination paper as soon as is practicable after he has received it and decide whether the candidate has been validly nominated.

14.4 Where the Returning Officer decides that a nomination is invalid, the Returning Officer must endorse this on the nomination paper, stating the reasons for their decision.

14.5 The Returning Officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

**15. Publication of statement of candidates**

15.1 The Returning Officer is to prepare and publish a statement showing the candidates who are standing for election.

15.2 The statement must show:

- a) The name, contact address, and Constituency or Class within a Constituency of each candidate standing, and
- b) The declared interests of each candidate standing as given in their nomination paper.

15.3 The statement must list the candidates standing for election in alphabetical order by surname.

15.4 The Returning Officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

## 16. **Inspection of statement of nominated candidates and nomination papers**

16.1 The corporation is to make the statements of the candidates and the nomination papers supplied by the Returning Officer under rule 15.4 available for inspection by members of the public free of charge at all reasonable times.

16.2 If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

## 17. **Withdrawal of candidates**

A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the Returning Officer a written notice of withdrawal which is signed by the candidate and attested by a witness.

## 18. **Method of Election**

18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to the Council of Governors, then:

- a) The candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- b) The Returning Officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

## **PART 5 – CONTESTED ELECTIONS**

### **19. Poll to be taken by ballot**

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

### **20. The ballot paper**

- 20.1 The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
  - a) The name of the corporation.
  - b) The Constituency, or Class within a Constituency, for which the election is being held.
  - c) The number of members of the Council of Governors to be elected from that Constituency, or Class within that Constituency.
  - d) The names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates.
  - e) Instructions on how to vote.
  - f) If the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - g) The contact details of the Returning Officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

**21. The declaration of identity (Public Constituency)**

21.1 In respect of an election for a Public Constituency a declaration of identity must be issued with each ballot paper.

21.2 The declaration of identity is to include a declaration:

- a) That the voter is the person to whom the ballot paper was addressed.
- b) That the voter has not marked or returned any other voting paper in the election, and
- c) For a member of the Public Constituency, of the particulars of that member's qualification to vote as a member of the Constituency or Class within a Constituency for which the election is being held.

21.3 The declaration of identity is to include space for:

- a) The name of the voter.
- b) The address of the voter.
- c) The voter's signature, and
- d) The date that the declaration was made by the voter.

21.4 The voter must be required to return the declaration of identity together with the ballot paper.

21.5 The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

**ACTION TO BE TAKEN BEFORE THE POLL**

**22. List of eligible voters**

22.1 The corporation is to provide the Returning Officer with a list of the members of the Constituency or Class within a Constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member, a mailing address where his ballot paper is to be sent.

**23. Notice of poll**

The Returning Officer is to publish a notice of the poll stating:

- a) The name of the corporation.
- b) The Constituency, or Class within a Constituency, for which the election is being held.
- c) The number of members of the Council of Governors to be elected from that Constituency, or Class with that Constituency.
- d) The names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates.
- e) That the ballot papers for the election are to be issued and returned, if appropriate, by post.
- f) The address for return of the ballot papers, and the date and time of the close of the poll.
- g) The address and final dates for applications for replacement ballot papers, and
- h) The contact details of the Returning Officer.

**24. Issue of voting documents by Returning Officer**

24.1 As soon as is reasonably practicable on or after the publication of the notice of the poll, the Returning Officer is to send the following documents to each member of the corporation named in the list of eligible voters:

- a) A ballot paper and ballot paper envelope.
- b) A declaration of identity (if required).
- c) Information about each candidate standing for election, pursuant to rule 47 of these rules, and
- d) A covering envelope.

24.2 The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

**25. Ballot paper envelope and covering envelope**

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- a) The address for return of the ballot paper printed on it, and
  - b) Pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the Returning Officer:
- a) The completed declaration of identity if required, and
  - b) The ballot paper envelope, with the ballot paper sealed inside it.

## **THE POLL**

### **26. Eligibility to vote**

An individual who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

### **27. Voting by persons who require assistance**

- 27.1 The Returning Officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 27.2 Where the Returning Officer receives a request from a voter who requires assistance to vote, the Returning Officer is to make such arrangements as he considers necessary to enable that voter to vote.

### **28. Spoilt ballot papers**

- 28.1 If a voter has dealt with his ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the Returning Officer for a replacement ballot paper.
- 28.2 On receiving an application, the Returning Officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he can obtain it.
- 28.3 The Returning Officer may not issue a replacement ballot paper for a spoilt ballot paper unless he:
- a) Is satisfied as to the voter’s identity, and
  - b) Has ensured that the declaration of identity, if required, has not been returned.
- 28.4 After issuing a replacement ballot paper for a spoilt ballot paper, the Returning Officer shall enter in a list (“the list of spoilt ballot papers”):



- a) The name of the voter, and
- b) The details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- c) The details of the unique identifier of the replacement ballot paper.

**29. Lost ballot papers**

29.1 Where a voter had not received his ballot paper by the fourth day before the close of the poll, that voter may apply to the Returning Officer for a replacement ballot paper.

29.2 The Returning Officer may not issue a replacement ballot paper for a lost ballot paper unless they:

- a) Is satisfied as to the voter's identity.
- b) Has no reason to doubt that the voter did not receive the original ballot paper, and
- c) Has ensured that the declaration of identity if required has not been returned.

29.3 After issuing a replacement ballot paper, the Returning Officer shall enter in a list ("the list of lost ballot papers"):

- a) The name of the voter, and
- b) The details of the unique identifier of the replacement ballot paper.

**30. Issue of a replacement ballot paper**

30.1 If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the Returning Officer in the name of that voter, the Returning Officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28.3 or 29.2, he is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the Returning Officer in the name of that voter.

30.2 After issuing a replacement ballot paper under this rule, the Returning Officer shall enter in a list ("the list of tendered ballot papers"):

- a) The name of the voter, and
- b) The details of the unique identifier of the replacement ballot paper issued under this rule.

**31. Declaration of identity for replacement ballot papers (Public Constituency)**

31.1 In respect of an election for a Public Constituency a declaration of identity must be issued with each replacement ballot paper.

31.2 The declaration of identity is to include a declaration:

- a) That the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- b) Of the particulars of that member's qualification to vote as a member of the Public Constituency, or Class within a Constituency, for which the election is being held.

31.3 The declaration of identity is to include space for:

- a) The name of the voter.
- b) The address of the voter.
- c) The voter's signature, and
- d) The date that the declaration was made by the voter.

31.4 The voter must be required to return the declaration of identity together with the ballot paper.

31.5 The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

**PROCEDURE FOR RECEIPT OF ENVELOPES**

**32. Receipt of voting documents**

32.1 Where the Returning Officer receives a:

- a) covering envelope, or
- b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that Officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

32.2 The Returning Officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to:

- a) The candidate for whom a voter has voted, or
  - b) The unique identifier on a ballot paper.
- 32.3 The Returning Officer must make arrangements to ensure the safety and security of the ballot papers and other documents.
33. **Validity of ballot paper**
- 33.1 A ballot paper shall not be taken to be duly returned unless the Returning Officer is satisfied that it has been received by the Returning Officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.
- 33.2 Where the Returning Officer is satisfied that paragraph 33.1 has been fulfilled, he is to:
- a) Put the declaration of identity if required in a separate packet,  
and
  - b) Put the ballot paper aside for counting after the close of the poll.
- 33.3 Where the Returning Officer is not satisfied that paragraph 33.1 has been fulfilled, he is to:
- a) Mark the ballot paper “disqualified”.
  - b) If there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it to the ballot paper.
  - c) Record the unique identifier on the ballot paper in a list (the “list of disqualified documents”) and
  - d) Place the document or documents in a separate packet.
34. **Declaration of identity but no ballot paper (Public Constituency)**
- Where the Returning Officer receives a declaration of identity if required but no ballot paper, the Returning Officer is to:
- a) Mark the declaration of identity “disqualified”.
  - b) Record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper and
  - c) Place the declaration of identity in a separate packet.

**35. Sealing of packets**

As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the Returning Officer is to seal the packets containing:

- a) The disqualified documents, together with the list of disqualified documents inside it.
- b) The declarations of identity if required.
- c) The list of spoilt ballot papers.
- d) The list of lost ballot papers.
- e) The list of eligible voters, and
- f) The list of tendered ballot papers.

**PART 6 – COUNTING THE VOTES**

**36. Interpretation of Part 6** – In Part 6 of these rules –

**37. Arrangements for counting of the votes**

The Returning Officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

**38. The Count**

38.1 The Returning Officer is to:

- a) Count and record the number of ballot papers that have been returned, and
- b) Count the votes according to the provisions in this Part of the rules.

38.2 The Returning Officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

38.3 The Returning Officer is to proceed continuously with counting the votes as far as is practicable.

**39. Rejected ballot papers**

39.1 Any ballot paper:

- a) Which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced.
- b) On which votes are given for more candidates than the voter is entitled to vote.
- c) On which anything is written or marked by which the voter can be identified except the unique identifier, or
- d) Which is unmarked or rejected because of uncertainty.

Shall subject to paragraphs 39.2 and 39.3 below, be rejected and not counted.

39.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

39.3 A ballot paper on which a vote is marked:

- a) Elsewhere than in the proper place.
- b) Otherwise than by means of a clear mark.
- c) By more than one mark.

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

39.4 The Returning Officer is to:

- a) Endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- b) In the case of a ballot paper on which any vote is counted under paragraph 39.2 or 39.3 above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

39.5 The Returning Officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- a) Does not bear proper features that have been incorporated into the ballot paper.
- b) Voting for more candidates than the voter is entitled to.
- c) Writing or mark by which voter could be identified, and
- d) Unmarked or rejected because of uncertainty.

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

- a) According to the next available preference given on those papers for any continuing candidate, or

#### **40. Equality of votes**

Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the Returning Officer is to decide between those candidates by a lot and proceed as if the candidate on whom the lot falls had received an additional vote.

### **PART 7 – FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

#### **41. Declaration of result for contested elections**

41.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- a) Declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the Constituency, or Class within a Constituency, for which the election is being held to be elected.
- b) Give notice of the name of each candidate who he has declared elected:
  - (i) Where the election is held under a proposed Constitution pursuant to powers conferred on the Warrington and Halton Teaching Hospitals NHS Foundation Trust by section 34 (4) of the 2006 Act, to the Chair of the NHS Trust, or
  - (ii) In any other case, to the Chair of the corporation; and
- c) Give public notice of the name of each candidate whom he has declared elected.

41.2 The Returning Officer is to make:

- a) The total number of votes given for each candidate (whether elected or not), and
- b) The number of rejected ballot papers under each of the headings in rule 39.5

Available on request.

42. Declaration of result for uncontested elections

In an uncontested election, the Returning Officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

- a) declare the candidate or candidates remaining validly nominated to be elected,
- b) give notice of the name of each candidate who they have declared elected to the Chair of the Corporation, and
- c) give public notice of the name of each candidate who they have declared elected.

**PART 8 – DISPOSAL OF DOCUMENTS**

43. **Sealing up of documents relating to the poll**

43.1 On completion of the counting at a contested election, the Returning Officer is to seal up the following documents in separate packets:

- a) The counted ballot papers.
- b) The ballot papers endorsed with “rejected in part”.
- c) The rejected ballot papers, and
- d) The statement of rejected ballot papers.

43.2 The Returning Officer must not open the sealed packets of:

- a) The disqualified documents, with the list of disqualified documents inside it.
- b) The declarations of identity.
- c) The list of spoilt ballot papers.
- d) The list of lost ballot papers.
- e) The list of eligible voters, and
- f) The list of tendered ballot papers.

43.3 The Returning Officer must endorse on each packet a description of:

- a) Its contents.
- b) The date of the publication of notice of the election.
- c) The name of the corporation to which the election relates, and
- d) The Constituency, or Class within a Constituency, to which the election relates.

**44. Delivery of documents**

Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 43, the Returning Officer is to forward them to the Chair of the corporation.

**45. Forwarding of documents received after close of the poll**

Where:

- a) Any voting documents are received by the Returning Officer after the close of the poll, or
- b) Any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- c) Any applications for replacement ballot papers are made too late to enable new ballot papers to be issued.

The Returning Officer is to put them in a separate packet, seal it up, and endorse and forward it the Chair of the corporation.

**46. Retention and public inspection of documents**

- 46.1 The corporation is to retain the documents relating to an election that are forwarded to the Chair by the Returning Officer under these rules for one year and then, unless otherwise directed by the Regulator, cause them to be destroyed.
- 46.2 With the exception of the documents listed in rule 47.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 46.3 A person may request a copy or extract from the documents relating to an election that is held by the corporation, and the corporation is to provide it and may impose a reasonable charge for doing so.



**47. Application for inspection of certain documents relating to an election**

47.1 The corporation may not allow the inspection of, or the opening of any sealed packet containing:

- a) Any rejected ballot papers, including ballot papers rejected in part.
- b) Any disqualified documents, or the list of disqualified documents.
- c) Any counted ballot papers.
- d) Any declarations of identity, or
- e) The list of eligible voters.

by any person without the consent of the Regulator.

47.2 A person may apply to the Regulator to inspect any of the documents listed in 47.1 and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

47.3 The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:

- a) Persons.
- b) Time.
- c) Place and mode of inspection.
- d) Production or opening.

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

On an application to inspect any of the documents listed in paragraph 47.1.

- a) In giving its consent, the Regulator, and
- b) And making the documents available for inspection, the corporation

must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:

- (i) That his vote was given, and
- (ii) That the Regulator has declared that the vote was invalid.

## **PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

### **48 Countermand or abandonment of poll on death of candidate**

- 48.1 If, at a contested election, proof is given to the Returning Officer's satisfaction before the result of the election is declared that one of the persons named, or to be named, as a candidate has died, then the Returning Officer is to:
- a) Countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that Constituency or Class, and
  - b) Order a new election, on a date to be appointed by him in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- 48.2 Where a new election is ordered under paragraph 48.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that Constituency or Class.
- 48.3 Where a poll is abandoned under paragraph 48.1a) paragraphs 48.4 to 48.7 are to apply.
- 48.4 The Returning Officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34 and is to make up separate sealed packets in accordance with rule 35.
- 48.5 The Returning Officer is to:
- a) Count and record the number of ballot papers that have been received, and
  - b) Seal up the ballot papers into packets, along with the records of the number of ballot papers.
- 48.6 The Returning Officer is to endorse on each packet a description of:
- a) Its contents.
  - b) The date of the publication of notice of the election.
  - c) The name of the corporation to which the election relates, and
  - d) The Constituency or Class within a Constituency, to which the election relates.

- 48.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs 48.4 to 48.6, the Returning Officer is to deliver them to the Chair of the corporation and rules 46 and 47 are to apply.

## **PART 10 – ELECTION EXPENSES AND PUBLICITY**

### **Election expenses**

#### **49. Election expenses**

Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the Regulator under Part 11 of these rules.

#### **50. Expenses and payments by candidates**

A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

- a) Personal expenses.
- b) Travelling expenses and expenses incurred while living away from home, and
- c) Expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

#### **51. Election expenses incurred by other persons**

##### **51.1 No person may:**

- a) Incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- b) Give a candidate or his family any money or property (whether as a gift, donation, loan or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

- 51.2 Nothing in this rule is to prevent the corporation from incurring such expenses and making such payments, as it considers necessary pursuant to rules 52 and 53.

## **Publicity**

### **52. Publicity about election by the corporation**

52.1 The corporation may:

- a) Compile and distribute such information about the candidates, and
- b) Organise and hold such meetings to enable the candidates to speak and respond to questions.

as it considers necessary.

52.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 52, must be:

- a) Objective, balanced and fair.
- b) Equivalent in size and content for all candidates.
- c) Compiled and distributed in consultation with all of the candidates standing for election, and
- d) Must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more candidates.

52.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

### **53. Information about candidates for inclusion with voting documents**

53.1 The corporation must compile information about the candidates standing for election, to be distributed by the Returning Officer pursuant to rule 24 of these rules.

53.2 The information must consist of:

- a) A statement submitted by the candidate of no more than 250 words, and
- b) A photograph of the candidate.

**54. Meaning of “for the purposes of an election”**

- 54.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- 54.2 The provision by any individual of his own services voluntarily, on his own time and free of charge is not to be considered an expense for the purposes of this Part.

**PART 11 – QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES**

**55. Application to question an election**

- 55.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.
- 55.2 An application may only be made once the outcome of the election has been declared by the Returning Officer.
- 55.3 An application may only be made to the Regulator by:
- a) A person who voted at the election or who claimed to have had the right to vote, or
  - b) A candidate, or a person claiming to have had a right to be elected at the election.
- 55.4 The application must:
- a) Describe the alleged breach of the rules or electoral irregularity, and
  - b) Be in such a form as the Regulator may require.
- 55.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 55.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  - b) The determination by the person or persons nominated in accordance with Rule 55.6 shall be binding on and shall be given effect by the

corporation, the applicant and the members of the Constituency (or Class within a Constituency) including all the candidates for the election to which the application relates.

- c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

## **PART 12 – MISCELLANEOUS**

### **56. Secrecy**

56.1 The following persons:

- a) The Returning Officer.
- b) The Returning Officer's staff.

Must maintain and aid in maintaining the secrecy of the voting and the counting of the votes and must not, except for some purpose authorised by law, communicate to any person any information as to:

- (i) The name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted.
- (ii) The unique identifier on any ballot paper.
- (iii) The candidate(s) for whom any member has voted.

56.2 No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.

56.3 The Returning Officer is to make such arrangements as he thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

### **57. Prohibition of disclosure of vote**

No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he has voted.

### **58. Disqualification**

A person may not be appointed as a Returning Officer, or as staff of the Returning Officer pursuant to these rules, if that person is:

- a) A member of the corporation.

- b) An employee of the corporation.
- c) A Director of the corporation, or
- d) Employed by or on behalf of a person who has been nominated for election.

59. **Delay in postal service through industrial action or unforeseen event**

If industrial action, or some other unforeseen event, results in delay in:

- a) The delivery of the documents in rule 24, or
- b) The return of the ballot papers and declarations of identity.

The Returning Officer may extend the time between the publication of the notice of the poll and the close of the poll with the agreement of the Regulator.

## **ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS (Paragraphs 13.3, 13.4 and 18)**

### **Compliance with Code of Conduct**

Governors shall comply with the Trust's Code of Conduct for Governors at Annex 5B.

### **Training**

The Membership Strategy outlines the details of the training programme for members and Governors. Governors shall comply in so far as is possible with any training requirements identified by the Trust. The training programme set out in the Membership Strategy shall be reviewed from time to time and amended as required.

### **Eligibility to be a Governor**

A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:

1. They are a Director of the Trust or any other NHS Body as defined in this constitution;
2. They are a Governor of another NHS Foundation Trust, unless:
  - a. They are a Local Authority Governor appointed by one of the local authorities specified in Annex 3; or
  - b. They are a Partnership Governor appointed by an NHS Body specified as a partnership organisation in Annex 3;
3. They are the spouse, partner, parent or child of a member of the Council of Governors or Board of Directors of the Trust;
4. They are under sixteen years of age at the time are nominated for election or appointment;
5. They are a member of a local authority's scrutiny committee covering health matters;
6. Being a member of the public constituency, they fail to sign a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
7. They fail to agree to comply with the Trust's Code of Conduct for Governors.
8. They fail to demonstrate compliance with the Trust's Code of Conduct for Governors.



9. Their use of social media does not reflect Trust values or The Nolan principles.
10. They have or have been subject to a Sexual Offences Prevention Order, a Foreign Travel Order or a Risk of Sexual Harm Order made under the provisions of the Sexual Offences Act 2003;
11. On the basis of disclosures obtained through an application to the Disclosure and Barring Service (including any application to the Criminal Records Bureau made prior to the establishment of the Disclosure and Barring Service), they are not considered suitable by the Trust's Executive Director responsible for Human Resources;
12. They are incapable by reason of mental disorder, illness or injury of managing or administering their property and affairs;
13. They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
14. They are 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/her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
15. They have had their name removed from any list maintained pursuant to Parts 4, 5, 6 or 7 of the NHS Act 2006 and/or Regulations made under those Parts, and has not subsequently had their name included on such a list, and, due to the reason(s) for such removal, they are not considered suitable by the Trust's Executive Director responsible for Human Resources;
14. They have previously been removed from office as a Governor of any Trust in accordance with the provisions of paragraph 8 below under the section titled 'Termination of office and removal of Governors'.

### **Requirement of Governor to notify Trust**

Where a person has been elected or appointed to be a Governor and they become disqualified from office under the provisions of this Constitution, they shall notify the Trust Secretary in writing of such disqualification.

### **Termination of office and removal of Governors**

A person holding office as a Governor shall immediately cease to do so if:

1. They resign by notice in writing to the Trust Secretary;
2. It otherwise comes to the notice of the Trust Secretary at the time the Governor takes office or later that the Governor is disqualified;
3. They fail to meet the expected responsibilities laid out in Annex 5 – Page 67.

4. If a Governor fails to adhere to the provisions laid out in paragraph 3, this will result in termination of office unless the other Governors are satisfied by a 75% majority that:
  - 4.1 The absences were due to reasonable causes; and
  - 4.2 The Governor will resume attendance at meetings of the Council of Governors again within such a period as it considers reasonable;
  - 4.3 If a Governor has been subject to a decision in their favour under paragraph 4 above and subsequently fails to meet the attendance standards set out in paragraph 3, that Governor's tenure of office is to be terminated immediately.
4. In the case of an elected Governor, they cease to be a member of the Trust;
5. In the case of an appointed Governor, the appointing organisation terminates the appointment;
6. They have refused without reasonable cause to undertake any training, which the Council of Governors requires all Governors to undertake;
7. they have failed to sign and deliver to the Trust Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's Code of Conduct for Governors;
8. They are removed from the Council of Governors by a resolution approved by a majority of the remaining Governors present and voting at a general meeting on the grounds that:
  - a) They have committed a serious breach of the Trust's Code of Conduct; or
  - b) They have failed to declare a relevant and material interest in accordance with the Council of Governors Standing Orders; or
  - c) They have acted in a manner detrimental to the interests of the Trust; or
  - d) The Council of Governors consider that it is not in the best interests of the Trust for him/her to continue as a Governor.

### **Suspension from office of Staff Governors**

If a staff Governor is suspended from duties for any reason they will also be suspended from their role as Governor for the duration of their suspension. Whilst a staff Governor is under suspension, the staff Governor cannot attend meetings of the Council of Governors in any capacity, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of paragraph 3 under termination of office and removal as Governor above.

## **Vacancies amongst Governors**

1. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
2. Where the vacancy arises amongst the appointed Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
3. Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
  - To call an election within three months to fill the seat for the remainder of that term of office, or
  - To invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat for any unexpired period of the term of office; or
  - To leave the vacancy outstanding until the next annual election, providing that the vacancy shall not be for more than nine months.

## **Roles and Responsibilities**

### Roles

The Governors have three general roles:

- Advisory – to communicate to the Board the views and interests of members and the wider community;
- Guardianship – to ensure that the Trust is operating in accordance with its authorisation;
- Strategic – to advise on the Trust's strategy and deliverance of that strategy.

The Governors shall carry out their roles and responsibilities in accordance with this Constitution and the Trust's Terms of Authorisation.

The roles of the Governors shall include to:

1. Appoint or remove the Chair and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;
2. Decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
3. Appoint or remove any external auditor and the Trust's financial auditor;

4. Approve (by a majority of the Council of Governors voting) an appointment of the Chief Executive, other than the initial Chief Executive;
5. Give the views of the Council of Governors to the Board of Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to Monitor;
6. Consider the annual accounts, any report of the financial auditor on them, and the annual report;
7. Consult with the Board of Directors on future plans for the services provided by the Trust;
8. Work with the Board of Directors to ensure the Trust operates within the conditions of its licence issued by Monitor;
9. Respond to any matter as appropriate when consulted by the Directors;
10. Review the Trust's Membership Strategy from time to time and at least once every three years to develop the membership of the Trust and represent the interests of members, and to review from time to time the Trust's policy for the composition of the Council of Governors and of the Non-executive Directors;
11. Establish mechanisms for consulting with the members and partnership organisations they may represent, particularly on developments and significant changes to services provided by the Trust;
12. Act as a source of ideas about how the Trust can provide services which reflect the needs of patients and the wider community;
13. Ensure that the Trust follows its values, as set out in the Trust's Membership Strategy;
14. Monitor the success of the Trust in meeting its planned service objectives;
15. Undertake such functions as the Board of Directors shall from time to time request.

### Responsibilities

The responsibilities of Governors shall include to:

1. Ensure that they do not miss two consecutive Council of Governors meetings in any financial year.
2. Attend at least two Governor constituency meetings in any financial year.
3. Attend at least two Constituency meetings in any financial year.

4. Attend at least one Governor observation visit in any financial year.
  
5. Use social media responsibly upholding Trust values in line with the Nolan Principles.

### **Appointment of Non-Executive Directors (including Chair and Deputy Chair)**

The Council of Governors shall establish a Nominations and Remuneration Committee to identify the skills, knowledge and experience required for Non-Executive Director posts, including the Chair and Deputy Chair of the Trust, and to prepare a suitable job description(s) and personal profile(s), which may be revised from time to time as required.

The Nominations and Remuneration Committee will identify suitable candidates (taking into account the skills, knowledge and experience identified as required for such posts and the job description(s) and personal profile(s) prepared) to assist with the process of selection of Non-Executive Directors (including the Chair and Deputy Chair) by the Council of Governors. The Terms of Reference of the Nominations and Remuneration Committee are set out in Annex 5A.

### **Duties of Deputy Chair**

Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair or the Non-Executive Director nominated by the Council of Governors to take on the duties of the Chair or Deputy Chair should both be absent from a meeting or otherwise unavailable or unable to perform their duties.

## **ANNEX 5A - COUNCIL OF GOVERNORS NOMINATIONS AND REMUNERATION COMMITTEE**

### **1. Purpose**

A Nominations and Remuneration Committee (“the Committee”) is to be established for the purposes of identifying appropriate candidates for the posts of Non-Executive Directors (including the Chair and Deputy Chair of the Foundation Trust), for making recommendations to the Council of Governors as to suitable candidates to fill the posts and for making recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Non-Executive Directors. The Committee will, taking into account the views of the Board of Directors, identify a balance of individual skills, knowledge and experience that is required at the time a vacancy arises and accordingly draw up a job description and personal profile for each new appointment.

### **2. Membership**

2.1 Membership of the Committee will consist of:

- The Chair of the Foundation Trust (or Deputy Chair when the appointment of the Chair or their remuneration and allowances and other terms and conditions of office are being discussed, or another Non-Executive Director if the Deputy Chair is standing for Chair);
- One Partnership Governor;
- One Staff Governor; and
- Two Elected Governors.

2.2 The Chair of another Foundation Trust may be invited to act as an independent assessor to the Committee to advise the Committee as and when required.

2.3 The Chief Executive of the Foundation Trust shall be entitled to attend meetings of the Committee unless the Committee decides otherwise. In carrying out its responsibilities under Section 5, the Committee shall take the Chief Executive’s views into account.

2.4 Members of the Committee may be required to undertake training and development commensurate with their responsibilities outlined in Section 5.

### **3. Chair of the Committee**

The Chair of the Committee will be the Chair of the Foundation Trust, unless the discussion relates to the appointment of the Chair or their remuneration and allowances and other terms and conditions of office, in which case the Deputy Chair will chair the Committee. In the event that the Deputy Chair wishes to stand for the appointment of Chair, the Committee will be chaired by another Non-Executive Director.

#### **4. Support for the Committee**

The Director of Human Resources will provide advice and support to the Committee as required to ensure that the nominations processes are managed in accordance with best practice and that the recommendations made to the Council of Governors on the Non-Executive Directors' remuneration and allowances and other terms and conditions of office are appropriate and relevant to local circumstances.

#### **5. Responsibilities of the Committee**

5.1 *To prepare information detailing the skills, knowledge and experience required for the posts of Non-Executive Directors and to prepare job descriptions and personal profiles for each post, as may be amended from time to time.*

5.2 Save for in the case of the appointment of the initial Chair and initial other Non-Executive Directors of the Foundation Trust, where such appointments take place in accordance with paragraph 24 of this Constitution, to undertake the selection process for Non-Executive Directors, elements of which may include: -

- Making arrangements for advertising and raising local awareness of the post(s);
- Making arrangements for the short listing of candidates;
- Making arrangements to conduct formal interviews;

so as to identify, through a process of open competition, suitable candidates and so as to make recommendations to the Council of Governors as to suitable candidates for approval by the Council of Governors. No more than five candidates shall be identified for each vacancy. The Council of Governors shall either appoint the recommended individual(s) or invite the Committee to make an alternative recommendation.

5.3 Save for in the case of the appointment of the initial Chair and initial other Non-Executive Directors of the Foundation Trust, where such appointments take place in accordance with paragraph 24 of this Constitution, in making such recommendations the Committee shall take account of the information prepared in accordance with Section 5.1 and the policy on the composition of the Non-Executive Directors.

5.4 On expiry of the initial Non-Executive Directors' current terms of appointment (or the period of 12 months, whichever is the greater) and on any subsequent vacancy, to consider whether to recommend to the Council of Governors the reappointment of the retiring Non-Executive Director. The Committee may not make any such recommendation other than for a first renewal of the appointment of a Non-Executive Director without first taking the steps outlined in Sections 5.1, 5.2 and 5.3 above. If the Council of Governors does not so appoint, or if the individual does not wish to continue, or if the Committee does not consider the reappointment appropriate, then suitable

new candidates will be identified by the Committee in accordance with the procedure outlined above.

- 5.5 To make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of Non-Executive Directors.

## **6. Quorum**

The quorum necessary for the transaction of business will be three members of the Committee, comprising the Chair of the Committee and two Governors.

## **7. Frequency of Meetings**

The Committee will meet at least annually and then as required to fulfil its responsibilities, as determined by the Chair.

## **8. Notice of Meetings**

- 8.1 Meetings of the Committee will be called at the request of the Chair.

- 8.2 Details of each meeting, including the agenda and supporting papers will be forwarded to each member of the Committee at least seven working days before the date of the meeting.

## **9. Minutes of Meetings**

Minutes of the meetings will be circulated promptly to all members of the Committee and to all other members of the Council of Governors as soon as reasonably practical.

## **10. Reporting Arrangements**

- 10.1 The Chair will report on the proceedings of each meeting to the next meeting of the Council of Governors. This discussion will take place in a private session i.e. not open to members of the public, when the names and details of individuals are being discussed.
- 10.2 The Chair will attend the Annual Members' Meeting to report on the activities of the Committee in the previous 12 months.

## **11. Authority**

The Committee is authorised to seek information and advice either within the Trust or externally on any matters within its terms of reference.

## **12. Review**

The Committee will review its own performance, relevant sections of the Constitution and terms of reference at least once a year to ensure it is operating at maximum effectiveness. Any proposed changes will be submitted by the Committee to the Council of Governors and to the Board of Directors for consideration.



## ANNEX 5B – GOVERNORS’ CODE OF CONDUCT

### Introduction

This Code has been drawn up in accordance with the Constitution and it is intended to support and complement the Constitution and its Annexes.

Its purpose is to make clear the appropriate conduct for Governors and address the requirements of the office of Governor on the Governor’s Council. As an elected or appointed Governor, it is important that Governors are in no doubt about the standards of conduct and personal behaviour expected of anyone who holds public office or works within the Trust.

Governors’ attention is also drawn to a number of Trust policies and documents regarding the Trust’s values, confidentiality and the use of information and social media:

- Information Governance Policy
- Freedom to Speak up Policy
- Media & Social Media Policy
- Equality, Diversity & Inclusion Policy
- Trust Values

Whilst these policies have been drawn up principally for staff, the principles of these policies should be adhered to by Governors (see section 3 paragraph 2 below). Any query regarding the content or interpretation of any Trust policy should be directed to either the Chair of the Trust or the Trust Secretary.

### Guiding Principles

The principles underpinning this Code of Conduct are drawn from the ‘seven principles of public life’, as defined by The Nolan Committee Report (1996). These principles are as follows:

- **Selflessness.** Governors must take decisions solely in terms of the public interest. Decisions must not be made to gain financial or material benefit for themselves, their family or friends. Governors must not attempt to use their status to gain advantage within the Trust or any other organisation.
- **Integrity.** Governors must not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
- **Objectivity.** In carrying out public business, including making appointments, awarding contracts or recommending individuals for rewards and benefits, Governors must make their choice based on merit.

- **Accountability.** Governors are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate for their office.
- **Openness.** Governors must be as open as possible about all the decisions and actions they take, and must give reasons for decisions, restricting information only when the wider public interest clearly demands.
- **Honesty.** Governors have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- **Leadership.** Governors should promote and support these principles by leadership and example.

The NHS Core Principles (as published by the Department of Health) also inform the Code of Conduct and should guide the activities of the Board of Governors. These principles dictate that the NHS will:

- Provide a universal service for all based on clinical need not the ability to pay.
- Provide a comprehensive range of services, shaped around the needs and preferences of individual patients, their families and their carers.
- Respond to the different needs of different populations.
- Work continuously to improve quality services and to minimise errors.
- Support and value its staff.
- Ensure public funds for healthcare are devoted solely to NHS patients.
- Work together with others to ensure a seamless service for patients.
- Help keep people healthy and work to reduce health inequalities.
- Respect the confidentiality of individual patients and provide open access to information relating to services, treatment and performance.

### **Code of Conduct**

A Governor must observe the Governors' Code of Conduct whenever he/she conducts the business of the Trust and/or the Board of Governors or acts as a representative of the Trust and/or the Board of Governors.

As a Governor of WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST I will:

1. Act as an ambassador for the Trust and represent both members and the general public.
2. At all times comply with the Constitution and its Standing Orders, the Standing Financial Instructions and all other policies and procedures of the Trust.
3. Uphold the Seven Principles of Public Life as set out by the Nolan Committee.
4. Abide by the NHS Core Principles.
5. Actively support the Trust's vision, aims and priorities ensuring the needs and best interests of the public, service users, relatives, carers and staff are foremost when making decisions.
6. Adopt a team approach, working with the Board of Directors, Trust staff and partner organisation to achieve the success of the Trust.
7. Support and assist the Trust's Chief Executive in their responsibility to answer the regulatory body, commissioners and the public in fully and faithfully declaring and explaining the use of resources, and the performance of the Trust in enacting national policy and delivering national targets.
8. Seek to ensure that no-one person or group is unlawfully discriminated against because of for example religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social or economic status or national origin.
9. Treat with dignity and respect the public, service users, relatives, carers, people who work within the Trust, and partners in other organisations.
10. Seek to ensure that my Governor colleagues are valued, and that judgements about them are consistent, fair, unbiased and properly founded.
11. Note that WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST is an apolitical organisation.
12. Recognise that if I am a member of any trade's union, political party or other organisation, (other than where a Governor has been appointed to the Governor's Council by an appointing organisation), I will not be representing that organisation or the views of that organisation.
13. Ensure that no political, religious or sectarian views influence any decisions I am party to.
14. Properly disclose and declare any actual or perceived personal, pecuniary or conflict of interest in any matter under discussion or consideration and refrain from any decision or vote on the matter, unless I am invited to participate by the Chair.

15. Not expect or seek any privileges, preferential or special treatment arising from being a Governor for either myself or my family or friends.
16. Ensure that when acting in my official capacity, or any other circumstances, I conduct myself in a way that will not bring the office of Governor, the Council of Governors or the Trust into disrepute. This includes the use of social media as described in paragraph 9 of 'Eligibility to be a Governor' laid out in Annex 5.
17. Not make, permit or knowingly allow to be made any untrue misleading statement relating to my own duties or the functions of the Trust.
18. Maintain a high level of confidentiality and not disclose any information given to me in confidence by anyone, or disclose information acquired which is or which I believe to be of a confidential nature without the consent of a person authorised to give it, unless I am required to do so by law. I will also not prevent another person from gaining access to information to which that person is entitled by law.
19. Raise any concerns regarding any matter relating to the activities of the Council of Governors, the Board of Directors or services within the Trust through the proper internal channels and within the terms of clause 42 of the Constitution.
20. At no time or for any reason speak to the press or media in relation to any Trust business or its employees or Board of Directors any official capacity unless authorised to do so by the Board of Directors or the Trust's Communications Department; and if approached by the press or media direct all enquiries to the Trust's Communications Department.
21. Ensure that the membership of the whole Constituency I am elected to represent, or the organisation I am appointed to represent is properly informed and their views are properly represented.
22. Exercise my responsibility in a corporate manner and ensure decisions are taken collectively with the Council of Governors acting as a unitary body, and support decisions taken by the Governor's Council even where I may not personally agree with the decision taken.
23. Not act individually or in informal groupings to take decisions on Council of Governors business outside the constitutional framework of Council of Governors meetings and Committees.
24. Undertake any training identified as required and receive guidance in respect of my responsibilities.
25. Attend all meetings of the Council of Governors and its Committees wherever possible in order to carry out my role as Governor.

26. Not, when acting as a Governor, visit any non-public area or setting in which treatment is provided, except where such a visit has been arranged by the Board of Directors or its representative.

Personal Declaration

I (full name) ..... have read, understood and agree to comply with the WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST's Code of Conduct for Governors, and I also agree to inform the Trust Secretary if at any time I become unable to comply with the Code or any part of the Code.

If during the course of my duties as a Governor I become involved with, or aware of any confidential information, including that relating to any person for example service users, carers, visitors, members of staff; or information relating to any Trust business, I will not at any time during or after my term of office as a Governor use or disclose such information inappropriately.

I understand that a breach of this code and the general obligation of confidentiality will be considered as a serious offence/misconduct issue and that I may be removed from the Council of Governors.

I understand that it is a requirement of the Constitution to sign the Code of Conduct and that failure to do so will preclude me from continuing in office as a Governor.

Signature .....

Date .....

## **ANNEX 6 – COUNCIL OF GOVERNORS STANDING ORDERS**

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  - Declaration of Interests
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- 9 Resolution of Disputes with Board of Directors**
- 10 Council Performance**
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## Interpretation

1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they shall be advised by the Chief Executive and Director of Finance).

1.2 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

“Accounting Officer” shall be the Officer responsible and accountable for funds entrusted to the Trust. They shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

“Board” shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors and the Executive Directors appointed by the Appointments Committee of the Board.

“Budget” shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

“Chair” is the person appointed by the Council of Governors in accordance with paragraphs 24 and 25 of this Constitution. The expression “the Chair of the Trust” shall be deemed to include the Non-Executive Director appointed by the Council of Governors to take on the Chair’s duties if the Chair is absent or is otherwise unavailable (the Deputy Chair).

“Chief Executive” shall mean the Chief Officer of the Trust.

“Committee” shall mean a committee appointed by the Council of Governors.

“Committee Members” shall be persons formally appointed by the Council of Governors to sit on or to chair specific committees.

“Director” shall mean a person appointed to the Board of Directors in accordance with the Trust’s Constitution and includes the Chair.

“Motion” means a formal proposition to be discussed and voted on during the course of a meeting.

“Nominated Officer” means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

“Officer” means an employee of the Trust.

“SOs” means Standing Orders.



## **2 General Information**

- 2.1 The purpose of the Council of Governors Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the Trust's Code of Conduct for Governors.
- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 The Board of Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Governor save where the Governor has acted recklessly. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

## **3 Composition of the Council of Governors**

- 3.1 The composition of the Council of Governors shall be in accordance with paragraph 10 and Annex 3 of the Trust's Constitution.

## **4. Meetings of the Council of Governors**

### **4.1 Meetings held in Public**

- 4.1.1 Meetings of the Council of Governors must be open to the public, subject to paragraphs 4.1.2 and 4.1.3 below.
- 4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that it considers that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.1.3 The Chair may exclude any member of the public from the meeting of the Council if they consider that they are interfering with or preventing any conduct of the meeting.
- 4.1.4 Meetings of the Council of Governors shall be held at least three times each year at times and places that the Council of Governors may determine.
- 4.1.5 The Council may invite the Chief Executive, and other appropriate Directors, to attend any meeting of the Council to enable Governors to raise questions about the Trust's affairs.

## **4.2 Calling Meetings**

Notwithstanding paragraph 4.1.4 above, the Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if without so refusing the Chair does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of their members.

## **4.3 Notice of Meetings**

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer of the Trust authorised by the Chair to sign on his/her behalf shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, or sent by electronic email to any email address notified to the Trust by such a Governor, so as to be available to him/her at least twenty-one clear days before the meeting subject to paragraphs 4.3.2 and 4.3.3 below. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.
- 4.3.2 Notwithstanding the above requirement for notice, the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.3 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.4 Failure to serve notice on more than three quarters of Governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent subject to paragraphs 4.3.2.

## **4.4 Setting the Agenda**

- 4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 4.4.2 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4.3 The Chair shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Governor, or sent by post

to the usual place of residence of such Governor, so as to be available to him/her at least five clear days before the meeting.

#### **4.5 Chair of Meeting**

At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting or the Council of Governors is meeting to appoint or remove the Chair or decide their remuneration and allowances and other terms and conditions of office, the Deputy Chair shall preside. Otherwise, another Non-Executive Director shall preside.

#### **4.6 Notices of Motions**

- 4.6.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert this in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3.3 of these Standing Orders.
- 4.6.2 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.6.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who gave it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 4.6.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- (a) An amendment to the motion.
  - (b) The adjournment of the discussion or the meeting.
  - (c) The appointment of an ad hoc committee to deal with a specific item of business.
  - (d) That the meeting proceed to the next business.
  - (e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

In the case of motions under (d) and (e), to ensure objectivity, motions may only be put by a Governor who has not previously taken part in the debate.

#### **4.7 Chair's Ruling**

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

#### **4.8 Voting**

4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

4.8.2 All decisions 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 Governors present so request.

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

4.8.4 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).

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

4.8.6 A Governor who is a member of the Public Constituency may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Trust Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Trust. A Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Governor's Council and every agenda for meetings of the Council of Governors shall draw this to the attention of the Governors.

#### **4.9 Suspension of Standing Orders (SOs)**

4.9.1 Except where this would contravene any statutory provision or a direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.

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

4.9.3 A separate record of matters discussed during the suspension of SOs shall be

made and shall be available to the Directors.

4.9.4 No formal business may be transacted while SOs are suspended.

4.9.5 The Trust's Audit Committee shall review every decision to suspend SOs.

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

These Standing Orders shall be amended only if:

- The amendment is approved by a simple majority of both the Board of Directors and the Council of Governors.

#### **4.11 Record of Attendance**

The names of the Governors present at the meeting shall be recorded in the minutes.

#### **4.12 Minutes**

4.12.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.12.3 Minutes shall be circulated in accordance with the Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.1 of these Standing Orders.

#### **4.13 Quorum**

4.13.1 No business shall be transacted at a meeting of the Council of Governors unless at least one-third of all the members, at least five of which are elected Governors, of the Council of Governors are present.

4.13.2 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest they shall no longer count towards the quorum. 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.

### **5 Arrangements for the Exercise of Functions by Delegation**

- 5.1 **Emergency Powers** - The powers which the Council of Governors has retained to itself within these Standing Orders may in an emergency be exercised by the Chair after having consulted at least five elected Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council for ratification.
- 5.2 **Delegation to a Governor** – The Council of Governors may delegate duties to an individual Governor but only under a clear remit approved by the Council.
- 5.3 The Nominations and Remuneration Committee of the Council of Governors shall exercise the functions set out in its Terms of Reference on behalf of the Council.

## **6 Confidentiality**

- 6.1 A member of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors under Clause 4.1.2 above without the permission of the Chair and the Council of Governors.
- 6.2 Members of the Nominations and Remuneration Committee shall not disclose any matter dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or Committee resolves that it is confidential.

## **7 Declaration of Interests and Register of Interests**

### **7.1 Declaration of Interests**

- 7.1.1 Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.1.2 Interests regarded as "relevant and material" include any of the following, held by a Governor, or the spouse, partner, parent or child of a Governor:
- a) Directorships, including non-executive directorships, held in private companies or PLCs (with the exception of those of dormant companies).
  - b) Ownership or part-ownership of or employment with private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - c) Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.
  - d) A position of authority in a charity or voluntary organisation in the field of health and social care.
  - e) Any connection with a voluntary or other organisation contracting for NHS services.

- 7.1.3 If a Governor has any doubt about the relevance of an interest, they should discuss it with the Chair who shall advise him/her whether or not to disclose the interest.
- 7.1.4 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of Interests of Governors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 7.1.5 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.
- 7.1.6 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision.
- 7.1.7 There is no requirement for the interests of Governors' spouses or partners to be declared except where the Governor is cohabiting with their spouse or partner, whereby any interest of a spouse or partner in a contract shall be declared.

## **7.2 Register of Interests**

- 7.2.1 The Trust Secretary, will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 7.2.3 Details of the Register will be kept up to date and reviewed annually.
- 7.2.4 The Register will be available to the public.

## **8 Compliance - Other Matters**

- 8.1 All Governors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 8.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 8.3 All Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Governors as amended from time to time): -
- Selflessness;
  - Integrity;
  - Objectivity;

- Accountability;
- Openness;
- Honesty, and
- Leadership.

## **9. Resolution of Disputes with Board of Directors**

- 9.1 Should a dispute arise between the Council and the Board of Directors, then the disputes resolution procedure set out below shall be followed.
- 9.2 The Chair, or Deputy Chair (if the dispute involves the Chair), 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.
- 9.3 Failing resolution under 9.2 above, then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 9.4 The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 9.5 The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved, then the procedure outlined in 9.2 above shall be repeated.
- 9.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council and Board accordingly.
- 9.7 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9 Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its authorisation.



**10. Council Performance**

The Chair shall, at least annually, lead a performance assessment process for the Council to enable the Council to review its roles, structure and composition, and procedures, taking into account emerging best practice.

**11. Changes to Standing Orders**

For the sake of clarity, future amendments to these Standing Orders are to be regarded as a change to the Trust's Constitution.

**ANNEX 7 – BOARD OF DIRECTORS STANDING ORDERS**  
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## **1. Interpretation**

1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they shall be advised by the Chief Executive and Director of Finance).

1.2 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

“Accounting Officer” shall be the Officer responsible and accountable for funds entrusted to the Trust. They shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

“Board” shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors and the Executive Directors appointed by the Appointments Committee of the Board.

“Budget” shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

“Chair” is the person appointed by the Council of Governors in accordance with paragraphs 24 and 25 of this Constitution. The expression “the Chair of the Trust” shall be deemed to include the Non-Executive Director appointed by the Council of Governors to take on the Chair’s duties if the Chair is absent or is otherwise unavailable (the Deputy Chair).

“Chief Executive” shall mean the Chief Officer of the Trust.

“Committee” shall mean a committee appointed by the Board of Directors.

“Committee Members” shall be persons formally appointed by the Board of Directors to sit on or to chair specific committees.

“Director” shall mean a person appointed to the Board of Directors in accordance with the Trust’s Constitution and includes the Chair.

“Motion” means a formal proposition to be discussed and voted on during the course of a meeting.

“Nominated Officer” means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

“Officer” means an employee of the Trust.

“SOs” means Standing Orders

## **2. General Information**

- 2.1 The purpose of the Board Standing Orders is to ensure that the highest standards of Corporate Governance are achieved in the Board and throughout the organisation. The Board shall at all times seek to comply with the Trust's Code of Conduct for Directors.
- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 The Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4 A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Director or Officer, save where the Director or Officer has acted recklessly. On behalf of the Directors and Officers, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

## **3. Composition of the Board**

- 3.1 The composition of the Board shall be as set out in paragraph 21 of the Trust's Constitution.

The number of Directors may be increased by the Board, provided always that at least half the Board, excluding the Chair, comprises Non-Executive Directors.

- 3.2 **Appointment and Removal of the Chair and Non-Executive Directors** - The Chair and Non-Executive Directors are appointed/removed by the Council of Governors in accordance with the Trust's Constitution.
- 3.3 **Appointment and Removal of the Executive Directors** – The Appointments Committee of the Board of Directors (excluding the Chief Executive) shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors). The Appointments Committee of the Board of Directors (inclusive of the Chief Executive) shall appoint or remove the other Executive Directors.
- 3.4 **Appointment and Removal of Deputy Chair** – For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors of the Trust will appoint one of the Non-Executive Directors to be the Deputy Chair.
- 3.5 **Powers of Deputy Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to

perform their duties, be taken to include references to the Deputy Chair or otherwise to the Non-Executive Director appointed by the Board to preside for the time being over its meetings.

3.6 **Joint Directors** - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count as one person.

3.7 Non-Executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of Non-Executive Directors.

#### **4. Meetings of the Board**

##### **4.1 Meetings**

4.1.1 Meetings of the Board shall be held in public unless the Board decides otherwise in relation to all or part of such meetings for reasons of commercial confidentiality or for other special reasons the Board of Directors may determine.

4.1.2 The Board may resolve to exclude members of the public from any public meeting or part of a meeting on the grounds that it considers that:

- a) publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- b) there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

4.1.3 The Chair may exclude any member of the public from the meeting of the Board if they consider that they are interfering with or preventing proper conduct of the meeting.

4.1.4 Meetings of the Board shall be held at least six times each year at times and places that the Board may determine.

4.1.5 The Board shall arrange, with the Council of Governors an annual members meeting to be held within 9 months of the end of each financial year.

##### **4.2 Calling Meetings**

The Chair may call a meeting of the Board at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her, at the Trust's Head Office, such one third or more Directors may forthwith call a meeting.

### **4.3 Notice of Meetings**

- 4.3.1 Notice of a meeting of the Board of Directors, shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least five clear days before the meeting. Lack of service of the notice on any Director shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.
- 4.3.2 Notwithstanding the above requirement for notice, the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.3 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.4 Subject to paragraph 4.3.2, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

### **4.4 Setting the Agenda**

- 4.4.1 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 4.7.3 In the case of a meeting called by the Chair, a Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

### **4.8 Chair of Meeting**

At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair appointed by the Council of Governors to take on the Chair's duties shall preside. Otherwise, such Non-Executive Director as the Directors present shall choose shall preside.

## 4.9 Notices of Motions

- 4.6.1 A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to paragraph 4.3.3 above.
- 4.9.1 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.9.2 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. When any such motion has been disposed of by the Board it shall not be competent for any Director, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 4.9.3 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.9.4 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- a) An amendment to the motion.
  - b) The adjournment of the discussion or the meeting.
  - c) The appointment of an ad hoc committee to deal with a specific item of business.
  - d) That the meeting proceed to the next business.
  - e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

In the case of motions under d) and e), to ensure objectivity, motions may only be put by a Director who has not previously taken part in the debate.



#### **4.10 Chair's Ruling**

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.

#### **4.11 Voting**

- 4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Directors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.11.1 All decisions 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.
- 4.11.2 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.
- 4.11.3 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.11.4 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.11.5 An officer who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

#### **4.12 Joint Directors**

Where an Executive Director post is shared by more than one person:

- a) Each person shall be entitled to attend meetings of the Board;
- b) In the case of agreement between them, they shall be eligible to have one vote between them;
- c) In the case of disagreement between them, no vote should be cast;
- d) The presence of those persons shall count as one person.

#### **4.13 Suspension of Standing Orders (SOs)**

4.10.1 Except where this would contravene any statutory provision or direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including two Executive Directors and two Non-Executive Directors, and that a majority of those present vote in favour of suspension.

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

4.13.2 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.

4.13.3 No formal business may be transacted while SOs are suspended.

4.13.4 The Audit Committee shall review every decision to suspend SOs.

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

These Standing Orders shall be amended only if:

- The amendment is approved by a simple majority of both the Board of Directors and the Council of Governors; and
- The amendment is approved by Regulator.

#### **4.15 Record of Attendance**

The names of the Directors present at the meeting shall be recorded in the minutes.

#### **4.16 Minutes**

4.13.1 The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.16.1 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.16.2 Minutes shall be circulated in accordance with the Directors' wishes. The minutes of any public meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.1 of these Standing Orders.

4.16.3 Before holding a meeting, the Board of Directors shall send a copy of the agenda of the meeting to the Council of Governors and shall, as soon as practicable after holding the meeting, send a copy of the minutes of the meeting to the Council of Governors.

#### 4.17 Quorum

- 4.14.1 No business shall be transacted at a meeting of the Board unless at least half of the Board are present including at least two Executive Directors and two Non-Executive Directors.
- 4.14.1a A director may join a meeting by electronic means. They may count towards the quorum and is entitled to vote if the requirement for their voice to be heard by the other directors present (and vice versa) is met.
- 4.17.1 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 4.17.2 If a Director has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest, they shall no longer count towards the quorum. 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.

### 5 Arrangements for the Exercise of Functions by Delegation

- 5.1 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 a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for ratification.
- 5.3 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees of Directors, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
- 5.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to one of its Committees shall be exercised on behalf of the Board by the Chief Executive. They shall determine which functions they will perform personally and shall nominate Officers to undertake remaining functions but still retain an accountability for these to the Board.
- 5.5 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals that shall be considered and approved by the Board, subject to any

amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board as indicated above.

- 5.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Executive Directors to provide information and advise the Board in accordance with any statutory requirements.

## **6 Committees**

### **6.1 Appointment of Committees**

- 6.1.1 The Board may appoint other committees of the Board subject to 5.1 and 5.3, consisting wholly or partly of Directors of the Trust. This may include the appointment of Committees in Common and Joint Committees with other NHS organisations
- 6.1.2 A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee but consisting of at least one Director of the Board
- 6.1.3 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board.
- 6.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board) as the Board shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.1.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 6.1.6 The Board shall approve the appointments to each of the committees that it has formally constituted. Where the Board determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.
- 6.1.7 Where the Trust is required to appoint persons to a committee, which is to operate independently of the Trust, such appointment shall be approved by the Board.

### **6.2 Confidentiality**

- 6.2.1 A member of the Board shall not disclose a matter dealt with by, or brought before, the Board without its permission.
- 6.2.2 A member of a committee of the Board shall not disclose any matter dealt with by, or brought before, the committee, notwithstanding that the matter has been

reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

## **7 Declaration of Interests and Register of Interests**

### **7.1 Declaration of Interests**

- 7.1.1 Directors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Board. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.1.2 Interests regarded as "relevant and material" include any of the following, held by a Director, or the spouse, partner, parent or child of a Director:
- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
  - b) Ownership or part-ownership of or employment with private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
  - d) A position of authority in a charity or voluntary organisation in the field of health and social care.
  - e) Any connection with a voluntary or other organisation contracting for NHS services.
- 7.1.3 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair.
- 7.1.4 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.
- 7.1.5 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.1.6 During the course of a Board meeting, if a conflict of interest is established in accordance with this Standing Order, the Director concerned should, unless two thirds of the Directors present agree (including two Executive and two Non-Executive Directors), withdraw from the meeting and play no part in the relevant discussion or decision. If the Director remains present at the meeting on the agreement of two thirds of those Directors present, they shall not be entitled to vote on the issue in respect of which the conflict of interest has been established.

## **7.2 Register of Interests**

- 7.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-Executive Directors.
- 7.2.2 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.
- 7.2.3 The Register will be available to the public and the Chief Executive 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.

## **8 Disability of Directors in Proceedings on Account of Pecuniary Interest**

- 8.1 Subject to the following provisions of this Standing Order, if the Chair or a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.2 The Board shall exclude the Chair or a Director from a meeting of the Board while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 8.3 The Board, as it may think fit, may remove any disability imposed by this Standing Order in any case in which it appears to the Board that, in the interests of the National Health Service, the disability shall be removed. Such action shall have the support of at least two-thirds of the Directors present at the meeting (including two Executive and two Non-Executive Directors).
- 8.4 Any remuneration, compensation or allowances payable to a Director of the Trust by virtue of paragraph 11 of Schedule 4 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.5 For the purpose of this Standing Order the Chair or a Director shall be treated, subject to paragraphs 8.3 and 8.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a) They, or their nominee is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; **or**

- b) They are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
  - c) In the case of persons living together the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 8.6 The Chair or a Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- a) Of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
  - b) Of an interest in any company, body or person with which they are connected as mentioned above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.7 Where the Chair or a Director:
- a) Has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
  - b) The total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
  - c) If the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class.

This Standing order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to their duty to disclose their interest.

- 8.8 This Standing Order applies to a committee or sub-committee of the Board as it applies to the Board and applies to any member of any such committee or sub-committee (whether or they are also a Director of the Trust) as it applies to a Director of the Trust.

## **9 Compliance - Other Matters**

- 9.1 All Directors of the Trust shall comply with the Standards of Business Conduct set by the Board for the guidance of all staff employed by the Trust.
- 9.2 All Directors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board.



9.3 All Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Directors as amended from time to time): -

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

## **10 Resolution of Disputes with Council of Governors**

- 10.1 Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.
- 10.2 The Chair, or Deputy Chair (if the dispute involves the Chair), 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.
- 10.3 Failing resolution under 10.2 above, then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4 The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.5 The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved, then the procedure outlined in 10.2 above shall be repeated.
- 10.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 10.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council and Board accordingly.

- 10.7 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9 Nothing in this procedure shall prevent the Council, if it so desires, from informing the Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its authorisation.

## **11 Notification to Monitor and Council of Governors**

The Board shall notify Monitor and the Council of Governors of any major changes in the circumstances of the Trust, which have made or could lead to a substantial change to its financial well-being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of its authorisation.

## **12. Board Performance**

The Chair shall, at least annually, lead a performance assessment process for the Board. This process should act as the basis for determining individual and collective professional development programs for Directors.

## **13. Changes to Board Standing Orders**

For the sake of clarity, future amendments to these Standing Orders by the Board are to be regarded as a change to the Trust's Constitution.

## **ANNEX 8 – MEMBERS - FURTHER PROVISIONS**

### **Disqualification from membership**

1. A person may not become a member of the Trust if within the last five years;
  - a) They have received a Red Card under the Trust's Procedure for Care of Patients who are Violent or Abusive; or
  - b) They have been involved as a perpetrator in a serious incident of violence at any of the Trust's Teaching Hospitals or facilities or against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against volunteers.
2. A person may not become or continue as a member of the Trust if they are or has been the subject of a Sexual Offences Prevention Order, a Foreign Travel Order or a Risk of Sexual Harm Order made under the provisions of the Sexual Offences Act 2003.
3. A person may not become a member of the Trust if they are under 12 years of age.
4. A person may not become or continue as a member of the Trust if they do not agree to comply with the Trust's aims and values.
5. Where the Trust is placed on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, the Trust Secretary shall give the member 14 days written notice to show cause why their name should not be removed from the register of members. If such information is not supplied by the member within 14 days, the Trust Secretary may, if they consider it appropriate, remove the member from the register of members. In the event of any dispute the Trust Secretary shall refer the matter to the Council of Governors to determine.
6. All members of the Trust shall notify the Trust Secretary of any change in their particulars, which may affect their entitlement to be a member.

### **Termination of membership**

A member shall cease to be a member if:

1. They die;
2. They resign by notice to the Trust Secretary;
3. They cease to be entitled under this Constitution to be a member of any of the Trust's Constituencies;
4. They are expelled under this Constitution;
5. It appears to the Trust Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the

Council of Governors, they fail to establish that they wish to continue to be a member of the Trust.

### **Expulsion**

A member may be expelled by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council. The following procedure is to be adopted:

1. Any member may complain in writing to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust.
2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
  - a) Dismiss the complaint and take no further action; or
  - b) Arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
3. If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
4. At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.

No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council.

### **Voting at Public Governor Elections**

A person may not vote at a Public Governor election for an elected Governor unless within the specified period they have made a declaration in the specified form setting out the particulars of their qualification to vote as a member of the Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

## LEAD GOVERNOR ROLE DESCRIPTION

NHS E/I, in its Code of Governance asks that all Foundation Trusts have a 'lead governor'.

### Primary Role

The primary purpose of the Lead Governor is to facilitate direct communication between the Regulator (NHS E/I) and the Council of Governors. The Regulator does not however envisage direct communication with Governors until such time as there may be a real risk of the Foundation Trust significantly breaching its licence or constitution and the Council's concerns cannot be satisfactorily resolved.

Once there is a risk that this may be the case, and the likely issue is one of board leadership, the Regulator will often wish to have direct contact with the Foundation Trust's Governors, but at speed and through one established point of contact – the Foundation Trust's nominated Lead Governor.

Such contact is likely to be a rare event and would be seen, for example, should NHS E/I wish to understand the view of the Governors about the capability of the chair, or be investigating some aspect of an appointment process of decision which may not have complied with the constitution.

It is important to remember that it is the Council of Governors *as a whole* (and no individual governor) that has the responsibilities and powers in statute.

### Lead Governor Duties:

- Leading the Council of Governors in exceptional circumstances when it is not appropriate for the chair or another non-executive to do so)
- Collating the input of Governors for the senior independent director or chair regarding annual performance appraisals of the chair and non-executive directors.
- Leading Governors on the Governors nominations and remuneration committee (GNARC) in the process for appointing a chair and non-executive directors.
- To recommend to the Council of Governors on behalf of the Nominations and Remuneration Committee any appointments/reappointments of Chair and/or Non-executive Directors
- Acting as a point of contact and liaison for the chair and senior independent director,
- Acting as a co-ordinator of governor responses to consultations,
- Chairing informal governor-only meetings.
- Attend Pt1 and Pt 2 Board Meeting and report to the Council of Governors on performance of NED's
- Troubleshooting and problem solving by raising issues with the chair and chief executive,
- Leading Governors in holding the non-executive directors to account,
- Contribute to the induction of new Governors.

- Present the Annual Governor's Report to Members at the Annual Members Meeting
- Meet routinely with the Chair, Company Secretary and Deputy Lead Governor to plan and prepare the agenda for Council of Governors meetings
- Work with individual Governors who need advice or support to fulfil their role as a Governor,
- Acting as a point of contact for the CQC and NHS E/I
- Other duties as requested by the Council of Governors or the Chairman

### **Term**

The 'term of office' two years or until the serving Governor's term ends, whichever is the sooner. The Lead Governor role is subject to two-yearly election or whenever a vacancy arises, whichever is sooner.

### **Eligibility**

To be eligible to stand governors:

1. Must have served at least one year with the WHH Council of Governors
2. Must have achieved reasonable attendance at the CoG (min attendance is 75%)

## **DEPUTY LEAD GOVERNOR ROLE DESCRIPTION**

The role of Deputy Lead Governor is not a statutory role under the NHS Foundation Trust Code of Governance.

### **Primary Role**

The primary purpose of the Deputy Lead Governor is to provide the Foundation Trust with a point of contact for the Council of Governors should the Lead Governor be unavailable for a period or has a conflict of interest.

The Deputy Lead Governor will also:

- Meet routinely with the Chair, Trust Secretary and Lead Governor to plan and prepare the agenda for Council of Governors meetings,
- Attend Trust Board meetings in the absence of the Lead Governor.
- Other duties as requested by the Council of Governors or the Chairman

### **Term**

The Deputy Lead Governor role is subject to two-yearly election or whenever a vacancy arises, whichever is sooner.

## **Eligibility**

To be eligible to stand governors:

1. Must have served at least one year with the WHH Council of Governors
2. Must have achieved reasonable attendance at the CoG (min attendance is 75%)