

Royal Surrey NHS Foundation Trust

Constitution

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NHS Foundation Trust Model Core Constitution

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1 INTERPRETATION AND DEFINITIONS

1.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006, as amended by the Health and Social Care Act 2012.

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

the 2006 Act is the National Health Service Act 2006.

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

Annual Members' Meeting is defined in paragraph 11 of the constitution.

constitution means this constitution and all annexes to it.

Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act, which operates with the National Health Service Trust Development Authority as NHS Improvement.

the 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.

the Secretary means the Trust's company secretary.

2 NAME

The name of the foundation Trust is Royal Surrey NHS Foundation Trust (the Trust).

3 PRINCIPAL AND FURTHER PURPOSES

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

3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes

- 3.3 The Trust may provide goods and services for any purposes related to –
- 3.3.1 The provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 3.3.2 The promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4 POWERS

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

5 MEMBERSHIP AND CONSTITUENCIES

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

- 5.1 a public constituency
- 5.2 a staff constituency

6 APPLICATION FOR MEMBERSHIP

An individual who is eligible to become a member of the Trust may do so on application to the Trust in accordance with paragraphs 7, 8 and 9 below.

7 PUBLIC CONSTITUENCY

- 7.1 An individual who lives in an area specified in column 2 of Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of members in each Public Constituency is specified in column 3 of Annex 1.

- 7.4 An eligible individual shall become a member upon entry to the membership register pursuant to an application by them.
- 7.5 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's register of members.

8 STAFF CONSTITUENCY

- 8.1 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:
 - 8.1.1 he is 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
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months (including, without limitation, nurses, doctors and other staff who have worked as bank staff within the Trust for 12 months or more).
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months and will include:
 - 8.2.1 Academic staff employed by a University and working in the Trust for 12 months or more,
 - 8.2.2 Volunteers who have worked within the Trust for 12 months or more, and
 - 8.2.3 Staff employed by independent contractors or a subsidiary wholly owned by the trust who exercise functions for the purposes of the Trust and who have worked within the Trust for 12 months or more (including Shared Business Services, Catering and Estates staff).
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into 5 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

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

8.6 An individual who is:

8.6.1 eligible to become a member of the Staff Constituency, and

8.6.2 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, and the Secretary shall cause the individual's name to be entered into the Trust's register of members.

9 NOT USED

10 RESTRICTION ON MEMBERSHIP

10.1 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.

10.2 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.

10.3 An individual shall not become or continue as a member if:

10.3.1 the individual is less than 14 years of age at the time of the application to become a member;

10.3.2 the individual is less than 16 years of age and does not have the agreement of a parent or guardian;

10.3.3 in the five years prior to the individual's application, the individual has been involved as a perpetrator in a serious incident of violence or harassment of people working for the Trust or any other NHS body or any service users or carers of or visitors to the Trust or any other NHS body consistent with the Trust's Zero Tolerance Policy;

10.3.4 the individual has been excluded from the Trust's premises;

- 10.3.5 the individual is ineligible under paragraphs 7, 8 or 9 of this Constitution to be a member;
- 10.3.6 the individual is a vexatious complainant as determined by the Secretary; or
- 10.3.7 the Council of Governors resolves for reasonable cause that the individual so doing would, or would be likely to:
 - 10.3.7.1 prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 10.3.7.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
 - 10.3.7.3 adversely affect public confidence in the goods or services provided by the Trust; or
 - 10.3.7.4 otherwise bring the Trust into disrepute.

11 ANNUAL MEMBERS' MEETING

- 11.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

12 COUNCIL OF GOVERNORS – COMPOSITION

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 12.2 The composition of the Council of Governors is specified in Annex 4.
- 12.3 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 4.

13 COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by NHS Providers form part of this constitution. The Model Election Rules current at the date of this revised Constitution are attached at Annex 5.
- 13.3 A subsequent variation of the Model Election Rules by NHS Providers or the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46 of the Constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.
- 13.5 A person may not vote at an election for or stand for election as an elected governor unless within the specified period stated in the Model Election Rules he has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held.

14 COUNCIL OF GOVERNORS – TENURE

- 14.1 A governor may hold office for a period of up to 3 years*. The period of office shall be known as the “Term”.
- 14.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3 An elected governor shall be eligible for re-election as appropriate at the end of his term and may be re-elected for consecutive terms provided that a governor shall not hold office for longer than nine consecutive years.
- 14.4 An appointed governor shall hold office initially for a term of 3 years.
- 14.5 An appointed governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of him by notice in writing to the Secretary.
- 14.6 A Governor, whether appointed or elected, who wants to stand for office after serving nine consecutive years, must wait a period of a term (3 years) before re-standing/being re-appointed.

*Local Authority Governors are appointed for 4 year terms in line with local authority terms of office.

15 COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

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

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

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

15.2.2 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;

15.2.3 a person who within the preceding five years has been convicted in the British Islands 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.

15.2.4 a person who is an executive director or non-executive director of the Trust;

15.2.5 Up to 20% of Public Governors may also hold Governor roles at any other Foundation Trust. Appointed Governors of RSFT may also hold Governor roles at another Foundation Trust subject to approval by the Chair and Lead Governor on an annual basis and stringent conflict of interest management.

15.2.6 a person who has been removed as a governor of another Foundation Trust;

15.2.7 a person who has had his name removed from a list maintained under regulations pursuant to Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;

- 15.2.8 a person who is the subject of a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);
- 15.2.9 a person who is incapable by reason of mental disorder, injury or illness of managing and administering his or her property and affairs;
- 15.2.10 a person who has failed to give written consent to the Secretary in a form reasonably prescribed by the Secretary to enable him to request a third party to provide data that will verify the person's status in relation to 15.1.1 – 15.1.9;
- 15.2.11 a person who has refused to take any training required by the Council of Governors for all governors.
- 15.3 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.4 If a governor fails to attend more than 2 consecutive meetings of the Council of Governors in any financial year, his tenure of office is to be terminated immediately unless the other governors are satisfied that:
 - 15.4.1 the absence was due to a reasonable cause; and
 - 15.4.2 he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 15.5 If a governor is considered to have acted in a manner inconsistent with:
 - 15.5.1 the vision and values of the Trust and the core principles of the NHS; or
 - 15.5.2 the terms of the Trust's licence; or
 - 15.5.3 the Standing Orders of the Council of Governors; or
 - 15.5.4 the Governors' Code of Conduct; or
 - 15.5.5 except as a result of a genuine mistake or where reasonable cause can be shown or where he can demonstrate that he has gained no personal benefit, he has failed to declare an interest as required by this Constitution or the Standing Orders of the Council of Governors, or he has spoken or voted at a meeting on a matter in which he has

an interest contrary to this Constitution or the Standing Orders of the Council of Governors, and in this paragraph “interest” includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

he is adjudged to have so acted by a majority of not less than 75% of the Council of Governors present and voting then the governor shall vacate his office immediately.

- 15.6 The Standing Orders of the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a governor’s tenure.

16 COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 16.1 The general duties of the Council of Governors are –
- 16.1.1 To hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
 - 16.1.2 To represent the interests of the members of the Trust as a whole and the interests of the public.
- 16.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

17 COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 17.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or paragraph 27.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 28 below), shall preside at meetings of the Council of Governors.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.
- 17.3 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.

18 COUNCIL OF GOVERNORS – STANDING ORDERS

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

19 COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

19.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—

19.1.1 to act in accordance with its constitution, or

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

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

20 COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS

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.

21 COUNCIL OF GOVERNORS – TRAVEL AND OTHER EXPENSES

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

22 COUNCIL OF GOVERNORS – FURTHER PROVISIONS

Further provisions with respect to the Council of Governors are set out in Annex 6.

23 BOARD OF DIRECTORS – COMPOSITION

- 23.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. The Trust shall have the power to appoint non-voting members of the Board; both executive and non-executive directors. The relevant titles for non-voting members will be agreed by the Board
- 23.2 The **Board** of Directors is to comprise:
- 23.2.1 a **non-executive Chair**;
 - 23.2.2 up to seven other **non-executive directors**, but not fewer than the number of appointed executive directors; and
 - 23.2.3 up to seven but not less than four **executive directors**.
- 23.3 One of the executive directors shall be the **Chief Executive**.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the executive directors shall be the **Finance Director**.
- 23.6 One of the executive directors is to be a **registered medical practitioner** (within the meaning of the Medical Act 1983) **or a registered dentist** (within the meaning of the Dentists Act 1984).
- 23.7 One of the executive directors is to be a **registered nurse or a registered midwife** (within the meaning of the Nurse and Midwifery Order 2001).
- 23.8 To be eligible to be the finance director of the Trust, an individual must have an appropriate accountancy qualification and the expertise or experience to lead the financial management of the Trust.
- 23.9 The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

24 BOARD OF DIRECTORS – GENERAL DUTY

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.

25 BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

A person may be appointed as a non-executive director only if –

- 25.1 he is a member of a Public Constituency,
- 25.2 he is not disqualified by virtue of paragraph 31 below.

26 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

- 26.1 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.
- 26.2 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 26.3 The **Chair** and non-executive directors are to be appointed in accordance with paragraph 27 below.

27 BOARD OF DIRECTORS – APPOINTMENT OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

- 27.1 The Chair of the applicant NHS Trust shall be appointed as the Chair of the Trust if he wishes to be appointed.
- 27.2 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 non-executive directors of the Trust any of the non-executive directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.
- 27.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 25 above (other than disqualification by virtue of paragraph 31 below) do not apply to **the** appointment of the Chair and the other non-executive directors in accordance with the procedures set out in this paragraph.
- 27.4 An individual appointed as the Chair or as a non-executive director 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 12 months, he shall be appointed for 12 months.

28 BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

29 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

- 29.1 A committee consisting of the Chair and the other non-executive directors shall appoint or remove the Chief Executive.
- 29.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 29.3 The Chief Executive is to be appointed in accordance with paragraph 30 below.
- 29.4 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.
- 29.5 Shortlisting and the selection process shall be carried out by an appointment committee comprising the Chief Executive, another executive director of the Trust, the Trust Chair and one other Non-executive director, and an executive director in the specialism being recruited to from another trust.

30 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHIEF EXECUTIVE

- 30.1 The chief officer of the applicant NHS Trust shall be appointed as the Chief Executive of the Trust if he wishes to be appointed.
- 30.2 The appointment of the chief officer of the applicant NHS Trust as the Chief Executive of the Trust shall not require the approval of the Council of Governors.

31 BOARD OF DIRECTORS – DISQUALIFICATION

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

- 31.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 31.2 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.

- 31.3 a person who within the preceding five years has been convicted in the British Islands 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.
- 31.4 a person whose tenure of office as a Chair or member or director of a NHS body has been terminated on the grounds that his appointment is not in the interests of the NHS.
- 31.5 a person who has had his name removed from a list maintained under regulations pursuant to Sections 91, 106, 123 or 147A of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list.
- 31.6 a person who has within the preceding 2 years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a NHS body.
- 31.7 a person who is an executive or non-executive director, Chair, Chief Executive or governing body member of an NHS body other than an NHS trust or NHS Foundation Trust.
- 31.8 not used.
- 31.9 a person who is a director (or equivalent) of:
 - 31.9.1 any Local Healthwatch organisation that holds a contract with a local authority for an area that includes the whole or part of any area specified in Annex 1 as an area for a Public Constituency; or
 - 31.9.2 any contractor that is authorised to assist any such Local Healthwatch organisation or to carry out activities on its behalf under arrangements made by it pursuant to Section 222(2B) of the Local Government and Public Involvement in Health Act 2007.
- 31.10 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986.
- 31.11 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors.

31.12 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Standards of Business Conduct.

31.13 a person who is the subject of a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003).31.14 a person who is not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or under Condition G4 of the Trust's License.

32 BOARD OF DIRECTORS – MEETINGS

32.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

32.2 The Board of Directors must provide Governors with a copy of the agenda prior to any meeting of the Board, and a copy of the approved public board minutes as soon as is practicable afterwards. The Chair will provide a summary of the private sessions of Board meetings as soon as practicable after holding a meeting. Governors should respect the confidentiality of these documents.

32.3 At each meeting of the Board of Directors, each director shall have one vote, where there is a joint post this will count as one vote. In the event of any equality of votes, the Chair shall have a casting vote.

33 BOARD OF DIRECTORS – STANDING ORDERS

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

34 BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS

34.1 The duties that a director of the Trust has by virtue of being a director include in particular –

34.1.1 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.

34.1.2 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.

- 34.2 The duty referred to in paragraph 34.1.1 is not infringed if –
- 34.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 34.2.2 The matter has been authorised in accordance with the constitution.
- 34.3 The duty referred to in paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4 In paragraph 34.1.2, “third party” means a person other than –
- 34.4.1 the Trust, or
 - 34.4.2 a person acting on its behalf.
- 34.5 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 must declare the nature and extent of that interest to the other directors.
- 34.6 If a declaration under this paragraph 34 proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph 34 must be made before the Trust enters into the transaction or arrangement.
- 34.8 This paragraph 34 does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question¹.
- 34.9 A director need not declare an interest –
- 34.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 34.9.2 if, or to the extent that, the directors are already aware of it;
 - 34.9.3 if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
 - 34.9.3.1 by a meeting of the Board of Directors, or

¹ See the Standards of Business Conduct Policy for further details

34.9.3.2 by a committee of the directors appointed for the purpose under the constitution.

35 BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 35.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.
- 35.2 The Trust 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.
- 35.3 Non-Executive Directors, including the chairperson, should be appointed for an initial term of up to three years. They may be subsequently reappointed for a second term of up to three years, providing they still meet qualification criteria set out in paragraph 25, and considering their performance in the role.
- 35.4 Reappointment for any further term beyond six years must be subject to rigorous review and annual re-appointment. Non-Executive Directors, including the chairperson, must not remain in post beyond nine years from the date of their first appointment.

36 REGISTERS

- 36.1 The Trust shall have:
- 36.1.1 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;
 - 36.1.2 a register of members of the Council of Governors;
 - 36.1.3 a register of interests of governors;
 - 36.1.4 a register of directors; and
 - 36.1.5 a register of interests of the directors.
- 36.2 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practicable and in any event within 28 days of receipt.

37 ADMISSION TO AND REMOVAL FROM THE REGISTERS

The Secretary shall remove from the register of members the name of any members who cease to be entitled to be a member under the provisions of this Constitution.

38 REGISTERS – INSPECTION AND COPIES

38.1 The Trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

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

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

38.4 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.

39 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

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

39.1.1 a copy of the current constitution;

39.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and

39.1.3 a copy of the latest annual report.

39.2 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:

39.2.1 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.
- 39.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 39.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 39.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 39.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 39.2.6 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 28 re-submitted final report) of the 2006 Act.
 - 39.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 39.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act.
 - 39.2.9 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.
 - 39.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 39.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 39.4 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.

40 AUDITOR

- 40.1 The Trust shall have an auditor.
- 40.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

41 AUDIT COMMITTEE

The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

42 ACCOUNTS

- 42.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 42.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts. The accounts are to be audited by the Trust's auditor.
- 42.3 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.
- 42.4 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

43 ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

- 43.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 43.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 43.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 43.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 43.5 Each forward plan must include information about -
 - 43.5.1 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

43.5.2 the income it expects to receive from doing so.

43.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 43.5.1 the Council of Governors must -

43.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

43.6.2 notify the directors of the Trust of its determination.

43.7 A Trust which 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 may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

44 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

44.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

44.1.1 the annual accounts

44.1.2 any report of the auditor on them

44.1.3 the annual report.

44.2 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.

44.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 44.1 with the Annual Members' Meeting.

45 INSTRUMENTS

45.1 The Trust shall have a seal.

45.2 The seal shall not be affixed except under the authority of the Board of Directors.

46 AMENDMENT OF THE CONSTITUTION

- 46.1 The Trust may make amendments of its constitution only if:
- 46.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments; and
 - 46.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 46.2 Amendments made under paragraph 46.1 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.
- 46.3 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 46.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 46.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 46.4 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.
- 46.5 Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.
- 46.6 For the avoidance of doubt, any amendments to the annexes attached to this constitution must also be approved in accordance with this paragraph 46.

47 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 47.1 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.

- 47.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 47.3 “Significant transaction” means a transaction defined as a significant transaction in NHS Improvement’s *Transactions guidance – for trusts undertaking transactions, including mergers and acquisition* as may be updated or amended from time to time, but does not include a statutory merger, acquisition, separation or dissolution requiring approval under paragraph 47.1 above.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraphs 7.1 and 7.3)

NAME OF CONSTITUENCY	AREA	MINIMUM NO. OF MEMBERS`	NUMBER OF GOVERNORS
Guildford	The electoral area of Guildford Borough Council	10	3
Waverley	The electoral area of Waverley Borough Council	10	3
Woking	The electoral area of Woking Borough Council	10	2
Mole Valley	The electoral area of Mole Valley District Council	10	2
East Hampshire	The electoral area of East Hampshire Borough Council	10	2
Chichester	The electoral area of Chichester District Council	10	1
Elmbridge	The electoral area of Elmbridge Borough Council	10	1
Rest of England	The electoral area of Rest of England	10	2
TOTALS	MINIMUM MEMBERSHIP	80	
	PUBLIC GOVERNORS		16

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.4 and 8.5)

NAME OF CLASS	MINIMUM NO. OF MEMBERS	NUMBER OF GOVERNORS
Medical and Dental	20	1
Nursing and Midwifery	20	1
Scientific & Technical and Allied Health Professionals	20	1
Ancillary, administrative and other staff	20	1
Other eligible staff who are not employed by the Trust but are academic staff, volunteers and employees of independent contractors, bank staff only	20	1
TOTAL MINIMUM MEMBERSHIP	100	
TOTAL STAFF GOVERNORS		5

ANNEX 3 – NOT USED

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 12.2 and 12.3)

The composition of the Council of Governors shall be as follows:

1 Composition

1.1 The Council of Governors shall comprise:

- 1.1.1 16 elected public governors;
- 1.1.2 5 elected staff governors;
- 1.1.3 Up to 3 representatives from the Local Authorities;
- 1.1.4 1 appointed University governor; and
- 1.1.5 1 appointed governor nominated by local cancer charities, which are specified for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act.

1.2 The number of public governors is to be more than half of the total membership of the Council of Governors.

1.3 The organisations specified as other partnership organisations in paragraph 3.3 below may appoint the number of governors so specified at paragraph 3.3 to the Council of Governors provided always that at the time of appointment the aggregate number of appointed governors and staff governors does not equal or exceed the number of governors elected by the Public Constituency.

1.4 The organisations listed in paragraph 3.3 below may be varied from time to time by the Trust, but for the avoidance of doubt such variation shall constitute an amendment to this Constitution and accordingly the provisions of Clause 46 of the Constitution shall apply.

2 Elected Governors

Elected Governors are specified in Annexes 1 and 2.

3 Appointed Governors

There shall be up to 5 appointed governors appointed by the organisations set out below.

3.1 Local Authority Governors

Up to 3 representatives from the Local Authorities

3.2 University Governor

1 representative of the University of Surrey.

3.3 Other Partnerships Governors

1 representative from local cancer charities, including the Prostate Project; the Royal Surrey NHS FT Charity; and the Fountain Centre. This does not exclude the other local cancer charities. The appointment to be jointly agreed.

ANNEX 5 –THE MODEL ELECTION RULES

(Paragraph 13.2)

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Part 1 – Interpretation

1 Interpretation –

1.1 (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 the Independent Regulator for NHS Foundation Trusts (Monitor); and

“the 2006 Act” means the NHS Act 2006

“Council of Governors” means the council of governors of the corporation;

“declaration of identity” has the meaning set out in rule 21.1;

“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;

“e-voting” means voting either using the internet, telephone or text message;

“lead governor” means the governor nominated by the corporation to fulfil the role described in appendix B to the NHS Foundation Trust code of governance;

“list of eligible voters” means the list referred to in rule 22.1, containing the information in rule 22.2;

“method of polling” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

1.2 (2) Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 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.

Proceeding	Time
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 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.
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 –
- 3.1.1 a Saturday or Sunday;
 - 3.1.2 Christmas day, Good Friday, or a bank holiday, or
 - 3.1.3 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 64, 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 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6 Expenditure - The corporation is to pay the returning officer –

- 6.1 any expenses incurred by that officer in the exercise of his or her functions under these rules,
- 6.2 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 or her 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 –

- 8.1 the constituency, or class within a constituency, for which the election is being held,
- 8.2 the number of members of the Council of governors to be elected from that constituency, or class within that constituency,

- 8.3 the details of any nomination committee that has been established by the corporation,
- 8.4 the address and times at which nomination papers may be obtained;
- 8.5 the address for return of nomination papers (including, where the return of nomination forms in an electronic format will be permitted, the email address for such return) and the date and time by which they must be received by the returning officer,
- 8.6 the date and time by which any notice of withdrawal must be received by the returning officer
- 8.7 the contact details of the returning officer, and
- 8.8 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-
 - 9.2.1 is to supply any member of the corporation with a nomination paper, and
 - 9.2.2 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 –

The nomination paper must state the candidate's –

- 10.1 full name,
- 10.2 contact address in full (which should be a postal address although an email address may also be provided for the purposes of electronic communication), and
- 10.3 constituency, or class within a constituency, of which the candidate is a member.

11 Declaration of interests – The nomination paper must state –

- 11.1 any financial interest that the candidate has in the corporation, and

11.2 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–

12.1 that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,

12.2 for a member of the public constituency, of the particulars of his or her 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 and dated by the candidate, indicating that –

13.1.1 they wish to stand as a candidate,

13.1.2 their declaration of interests as required under rule 11, is true and correct, and

13.1.3 (c) their declaration of eligibility, as required under rule 12, is true and correct.

Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

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-

14.1.1 decides that the candidate is not eligible to stand,

14.1.2 decides that the nomination paper is invalid,

14.1.3 receives satisfactory proof that the candidate has died, or

14.1.4 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 –
- 14.2.1 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,
 - 14.2.2 that the paper does not contain the candidate's particulars, as required by rule 10;
 - 14.2.3 that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - 14.2.4 that the paper does not include a declaration of eligibility as required by rule 12, or
 - 14.2.5 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 or she 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. If an email address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.
- 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 –
- 15.2.1 the name, contact address (which shall be the candidates postal address), and constituency or class within a constituency of each candidate standing, and

15.2.2 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 be Council of governors, then –

18.3.1 the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

18.3.2 the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by the returning officer 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.

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an email address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

19.6 If internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:

19.6.1 Configured in accordance with these rules; and

19.6.2 Will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;

19.7 If telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:

19.7.1 Configured in accordance with these rules; and

19.7.2 Will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;

19.8 If text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:

19.8.1 Configured in accordance with these rules; and

19.8.2 Will create an accurate text messaging voting system.

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 –

20.2.1 the name of the corporation,

20.2.2 the constituency, or class within a constituency, for which the election is being held,

20.2.3 the number of members of the council of governors to be elected from that constituency, or class within that constituency,

20.2.4 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,

20.2.5 instructions on how to vote by all available methods of polling, including the relevant voter's ID number if one or more e-voting methods of polling are available

20.2.6 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

20.2.7 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 constituencies)
- 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 –
- 21.2.1 that the voter is the person to whom the ballot paper was addressed,
 - 21.2.2 that the voter has not marked or returned any other voting paper in the election, and
 - 21.2.3 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 –
- 21.3.1 the name of the voter,
 - 21.3.2 the address of the voter,
 - 21.3.3 the voter's signature, and
 - 21.3.4 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 27 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:
- 22.2.1 a postal address and
 - 22.2.2 The members email address, if this has been provided
to which his or her voting information may, subject to rule 22.3 be sent
- 22.3 The corporation may decide that the e-voting information is to be sent only by email to those members in the list of eligible voters for whom an email address is included in that list.
- 23** Notice of poll
- 23.1 The returning officer is to publish a notice of the poll stating–
- 23.1.1 the name of the corporation,
 - 23.1.2 the constituency, or class within a constituency, for which the election is being held,
 - 23.1.3 the number of members of the council of governors to be elected from that constituency, or class with that constituency,
 - 23.1.4 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,
 - 23.1.5 that the ballot papers for the election are to be issued and returned, if appropriate, by post,
 - 23.1.6 The methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3
 - 23.1.7 the address for return of the ballot papers,
 - 23.1.8 the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
 - 23.1.9 the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located;
 - 23.1.10 the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located;

23.1.11 the date and time of the close of the poll.(l) the address and final dates for applications for replacement voting information, and

23.1.12 the contact details of the returning officer.

24 Issue of voting documents by returning officer

24.1 Subject to rule 24.3. 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—

24.1.1 a ballot paper and ballot paper envelope,

24.1.2 a declaration of identity (if required),

24.1.3 information about each candidate standing for election, pursuant to rule 61 of these rules, and

24.1.4 a covering envelope.

24.2 Subject to rules 24.3 and 24.4, 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 publication of the notice of the poll, the returning officer is to send the following information by email and or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and or rule 19.4 may cast his or her vote by an e-voting method of polling;

24.2.1 Instructions on how to vote and how to make a declaration of identity (if required)

24.2.2 The voter's voter ID number

24.2.3 Information about each candidate standing for the election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate

24.2.4 Contact details of the returning officer

24.3 The corporation may determine that any member of the corporation shall:

24.3.1 Only be sent postal voting information; or

24.3.2 Only be sent e-voting information; or

- 24.3.3 Be sent both postal voting information and e-voting information;
 - 24.3.4 for the purposes of the poll.
- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by email to those members in the list of eligible voters for whom an email address is included in that list, then the returning officer shall only send that information by email.
- 24.5 The voting information is to be sent to the postal address and or email 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 –
 - 25.2.1 the address for return of the ballot paper printed on it, and
 - 25.2.2 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 –
 - 25.3.1 the completed declaration of identity if required, and
 - 25.3.2 the ballot paper envelope, with the ballot paper sealed inside it.
 - 25.4 E-voting systems
 - 25.5 If internet voting is a method of polling for the relevant election, then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
 - 25.6 If telephone voting is a method of polling for the relevant election, then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
 - 25.7 If text message voting is a method of polling for the relevant election, then the returning officer must provide an automated text messaging system for the

purpose of voting by text message (in these rules referred to as “the text message voting facility”).

25.8 The returning officer shall ensure that the polling website and internet voting system provided will:

25.8.1 require a voter to:

25.8.1.1 enter his or her voter ID number; and

25.8.1.2 where the election is for a public constituency, make a declaration of identity;

in order to be able to cast his or her vote;

25.8.2 specify:

25.8.2.1 the name of the corporation,

25.8.2.2 the constituency, or class within a constituency, for which the election is being held,

25.8.2.3 the number of members of the council of governors to be elected from that constituency, or class within that constituency,

25.8.2.4 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,

25.8.2.5 instructions on how to vote and how to make a declaration of identity,

25.8.2.6 the date and time of the close of the poll, and

25.8.2.7 the contact details of the returning officer;

25.8.3 prevent a voter from voting for more candidates than he or she is entitled to at the election;

25.8.4 create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of

25.8.4.1 the voter's voter ID number;

25.8.4.2 the voter's declaration of identity (where required);

- 25.8.4.3 the candidate or candidates for whom the voter has voted; and
- 25.8.4.4 the date and time of the voter's vote,
- 25.8.5 if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- 25.8.6 prevent any voter from voting after the close of poll.
- 25.9 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:
 - 25.9.1 require a voter to
 - 25.9.1.1 enter his or her voter ID number in order to be able to cast his or her vote; and
 - 25.9.1.2 where the election is for a public constituency, make a declaration of identity;
 - 25.9.2 specify:
 - 25.9.2.1 the name of the corporation,
 - 25.9.2.2 the constituency, or class within a constituency, for which the election is being held,
 - 25.9.2.3 the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - 25.9.2.4 instructions on how to vote and how to make a declaration of identity,
 - 25.9.2.5 the date and time of the close of the poll, and
 - 25.9.2.6 the contact details of the returning officer;
 - 25.9.3 prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - 25.9.4 create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - 25.9.4.1 the voter's voter ID number;

- 25.9.4.2 the voter's declaration of identity (where required);
- 25.9.4.3 the candidate or candidates for whom the voter has voted; and
- 25.9.4.4 the date and time of the voter's vote
- 25.9.5 if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- 25.9.6 prevent any voter from voting after the close of poll.
- 25.10 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:
 - 25.10.1 require a voter to:
 - 25.10.1.1 provide his or her voter ID number; and
 - 25.10.1.2 where the election is for a public constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
 - 25.10.2 prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - 25.10.3 create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - 25.10.3.1 the voter's voter ID number;
 - 25.10.3.2 the voter's declaration of identity (where required);
 - 25.10.3.3 the candidate or candidates for whom the voter has voted; and
 - 25.10.3.4 the date and time of the voter's vote
 - 25.10.4 if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
 - 25.10.5 prevent any voter from voting after the close of poll.

The poll

26 Eligibility to vote

- 26.1 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 or she considers necessary to enable that voter to vote.

29 Spoilt ballot papers

- 27.3 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 27.4 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 27.5 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –
- 27.5.1 is satisfied as to the voter’s identity, and
 - 27.5.2 has ensured that the declaration of identity, if required, has not been returned.
- 27.6 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”) –
- 27.6.1 the name of the voter, and
 - 27.6.2 the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - 27.6.3 the details of the unique identifier of the replacement ballot paper.

- 27.7 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 27.8 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 27.9 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 27.10 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- 27.10.1 the name of the voter, and
 - 27.10.2 the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - 27.10.3 the details of the replacement voter ID number issued to the voter.
- 28** Lost voting information
- 28.1 Where a voter has not received his or her 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.
- 28.2 The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –
- 28.2.1 is satisfied as to the voter’s identity,
 - 28.2.2 has no reason to doubt that the voter did not receive the original ballot paper, and
 - 28.2.3 has ensured that the declaration of identity if required has not been returned.
- 28.3 After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
- 28.3.1 the name of the voter, and
 - 28.3.2 the details of the unique identifier of the replacement ballot paper.

28.3.3 the voter ID number of the voter

29 Issue of replacement ballot paper

29.1 If a person applies for a replacement ballot paper under rule 29 or 30 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 29.3 or 30.2, he or she 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.

29.2 After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

29.2.1 the name of the voter, and

29.2.2 the unique identifier of any replacement ballot paper issued under this rule;

29.2.3 The voter ID number of the voter

30 Declaration of identity for replacement ballot papers (public constituencies)

30.1 In respect of an election for a public constituency a declaration of identity must be issued with each replacement ballot paper.

30.2 The declaration of identity is to include a declaration –

30.2.1 that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

30.2.2 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.

30.3 The declaration of identity is to include space for –

30.3.1 the name of the voter,

30.3.2 the address of the voter,

30.3.3 the voter’s signature, and

30.3.4 the date that the declaration was made by the voter.

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

30.5 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.

31 Procedure for remote voting by internet

31.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

31.2 When prompted to do so, the voter will need to enter his or her voter ID number.

31.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

31.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

31.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

32 Voting procedure for remote voting by telephone

32.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

32.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

32.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

32.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

32.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

33 Voting procedure for remote voting by text message

- 33.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 33.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 33.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

Procedure for receipt of envelopes, internet votes, telephone votes and text message votes

34 Receipt of voting documents

34.1 Where the returning officer receives a –

34.1.1 covering envelope, or

34.1.2 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 37 and 38 are to apply.

34.2 The returning officer may open any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to –

34.2.1 the candidate for whom a voter has voted, or

34.2.2 the unique identifier on a ballot paper.

34.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

35 Validity of votes

35.1 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.

35.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to –

35.2.1 put the declaration of identity if required in a separate packet, and

35.2.2 put the ballot paper aside for counting after the close of the poll.

35.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to –

35.3.1 mark the ballot paper “disqualified”,

35.3.2 if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,

35.3.3 record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and

35.3.4 place the document or documents in a separate packet.

35.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

35.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

35.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

35.6.1 mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

35.6.2 record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and

35.6.3 place the document or documents in a separate packet.

- 36** 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 –
- 36.1 mark the declaration of identity “disqualified”,
 - 36.2 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
 - 36.3 place the declaration of identity in a separate packet.
- 37** De-duplication of votes
- 37.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
 - 37.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
 - 37.2.1 only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
 - 37.2.2 mark as “disqualified” all other votes that were cast using the relevant voter ID number
 - 37.3 Where a ballot paper is disqualified under this rule the returning officer shall:
 - 37.3.1 mark the ballot paper “disqualified”,
 - 37.3.2 if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
 - 37.3.3 record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
 - 37.3.4 place the document or documents in a separate packet; and
 - 37.3.5 disregard the ballot paper when counting the votes in accordance with these rules.
- 38** Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- 38.1.1 mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

- 38.1.2 record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- 38.1.3 place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- 38.1.4 disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

39 Sealing of packets

39.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing–

- 39.1.1 the disqualified documents, together with the list of disqualified documents inside it,
- 39.1.2 the declarations of identity if required,
- 39.1.3 the list of spoilt ballot papers,
- 39.1.4 the list of lost ballot papers,
- 39.1.5 the list of eligible voters, and
- 39.1.6 the list of tendered ballot papers.

And ensure that complete electronic copies of the internet voting records, telephone voting records, and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

Part 6 - Counting the votes

40 Not used

41 Arrangements for counting of the votes

41.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

41.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

41.2.1 the board of directors and the council of governors of the corporation have approved:

41.2.1.1 the use of such software for the purpose of counting votes in the relevant election, and

41.2.1.2 a policy governing the use of such software, and

41.2.2 the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

42 The count

42.1 The returning officer is to –

42.1.1 count and record the number of:

42.1.1.1 ballot papers that have been returned, and

42.1.1.2 The number of internet voting records, telephone voting records and/or text voting records that have been created, and

42.1.2 count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

42.2 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 or the voter ID number on an internet voting record, telephone voting record or text voting record.

42.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

43 Rejected ballot papers

43.1 Any ballot paper –

43.1.1 which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

- 43.1.2 on which votes are given for more candidates than the voter is entitled to vote,
 - 43.1.3 on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - 43.1.4 which is unmarked or rejected because of uncertainty,
- shall, subject to rules 44.2 and 44.3, be rejected and not counted.
- 43.2 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.
- 43.3 A ballot paper on which a vote is marked –
- 43.3.1 elsewhere than in the proper place,
 - 43.3.2 otherwise than by means of a clear mark,
 - 43.3.3 by more than one mark,
- is not to be rejected for such 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 or she can be identified by it.
- 43.4 The returning officer is to –
- 43.4.1 endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
 - 43.4.2 in the case of a ballot paper on which any vote is counted under paragraph 43.2 or 43.3 above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- 43.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –
- 43.5.1 does not bear proper features that have been incorporated into the ballot paper,
 - 43.5.2 voting for more candidates than the voter is entitled to,
 - 43.5.3 writing or mark by which voter could be identified, and

43.5.4 unmarked or rejected because of uncertainty,

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

43.6 Any text voting record:

43.6.1 on which votes are given for more candidates than the voter is entitled to vote,

43.6.2 on which anything is written or marked by which the voter can be identified except the voter ID number, or

43.6.3 which is unmarked or rejected because of uncertainty,

shall, subject to rules 44.7 and 44.8, be rejected and not counted.

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

43.8 A text voting record on which a vote is marked:

43.8.1 otherwise than by means of a clear mark,

43.8.2 by more than one mark,

is not to be rejected for such 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 text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

43.9 The returning officer is to:

43.9.1 endorse the word “rejected” on any text voting record which under this rule is not to be counted, and

43.9.2 in the case of a text voting record on which any vote is counted under rules 44.7 and 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

43.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

43.10.1 voting for more candidates than the voter is entitled to,

43.10.2 writing or mark by which voter could be identified, and

43.10.3 unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

44 Not used

45 Not used

46 Not used

47 Not used

48 Not used

49 Not used

50 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

51 Declaration of result for contested elections

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

51.1.1 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,

51.1.2 give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation; and

51.1.3 give public notice of the name of each candidate whom he or she has declared elected.

51.2 The returning officer is to make –

51.2.1 the total number of votes given for each candidate (whether elected or not),

51.2.2 the number of rejected ballot papers under each of the headings in rule 44(5),

51.2.3 The number of rejected text voting records under each of the headings in rule 44.10,

available on request.

52 Declaration of result for uncontested elections

52.1 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 –

52.1.1 declare the candidate or candidates remaining validly nominated to be elected,

52.1.2 give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and

52.1.3 give public notice of the name of each candidate who he or she has declared elected.

Part 8 – Disposal of documents

53 Sealing up of documents relating to the poll

53.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

53.1.1 the counted ballot papers,

53.1.2 the ballot papers endorsed with “rejected in part”,

53.1.3 the rejected ballot papers, and

53.1.4 the statement of rejected ballot papers.

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

53.2 The returning officer must not open the sealed packets of –

53.2.1 the disqualified documents, with the list of disqualified documents inside it,

53.2.2 the list of spoilt ballot papers,

53.2.3 the list of lost ballot papers,

53.2.4 the list of eligible voters.

Or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

53.3 The returning officer must endorse on each packet a description of –

53.3.1 its contents,

53.3.2 the date of the publication of notice of the election,

53.3.3 the name of the corporation to which the election relates, and

53.3.4 the constituency, or class within a constituency, to which the election relates.

54 Delivery of documents

Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 55, the returning officer is to forward them to the chair of the corporation.

55 Forwarding of documents received after close of the poll

55.1 Where –

55.1.1 any voting documents are received by the returning officer after the close of the poll, or

55.1.2 any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

55.1.3 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 to the chairman of the corporation.

56 Retention and public inspection of documents

56.1 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.

56.2 With the exception of the documents listed in rule 58.1, 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.

56.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

57 Application for inspection of certain documents relating to an election

57.1 The corporation may not allow:

57.1.1 the inspection of, or the opening of any sealed packet containing –

57.1.1.1 any rejected ballot papers, including ballot papers rejected in part,

57.1.1.2 any rejected text voting records, including text voting records rejected in part

57.1.1.3 any disqualified documents, or the list of disqualified documents,

57.1.1.4 any counted ballot papers, internet voting records, telephone voting records or text voting records, or

57.1.1.5 the list of eligible voters, or

57.1.2 access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

by any person without the consent of the board of directors of the corporation.

57.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation 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.

57.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

57.3.1 persons,

57.3.2 time,

57.3.3 place and mode of inspection,

57.3.4 production or opening,

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

57.4 On an application to inspect any of the documents listed in rule 58.1, the board of directors of the corporation must:

57.4.1 in giving its consent, and

57.4.2 in making the documents available for inspection,

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

57.4.2.1 that his or her vote was given, and

57.4.2.2 that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

58 Countermand or abandonment of poll on death of candidate

58.1 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

58.1.1 countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and

58.1.2 order a new election, on a date to be appointed by the returning officer 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.

58.2 Where a new election is ordered under rule 59.1, 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.

58.3 Where a poll is abandoned under rule 59.1(a), rules 59.4 to 59.7 are to apply.

- 58.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- 58.5 The returning officer is to –
- 58.5.1 count and record the number of ballot papers that have been received, and
 - 58.5.2 seal up the ballot papers into packets, along with the records of the number of ballot papers.
- ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 58.6 The returning officer is to endorse on each packet a description of –
- 58.6.1 its contents,
 - 58.6.2 the date of the publication of notice of the election,
 - 58.6.3 the name of the corporation to which the election relates, and
 - 58.6.4 the constituency, or class within a constituency, to which the election relates.
- 58.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 59.4 to 59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

Part 10 – Election expenses and publicity

Election expenses

59 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.

60 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 –

- 60.1 personal expenses,
- 60.2 travelling expenses, and expenses incurred while living away from home, and
- 60.3 expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of [£100].

61 Election expenses incurred by other persons

61.1 No person may –

61.1.1 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

61.1.2 give a candidate or his or her 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.

61.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

62 Publicity about election by the corporation

62.1 The corporation may –

62.1.1 compile and distribute such information about the candidates, and

62.1.2 organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

62.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be –

- 62.2.1 objective, balanced and fair,
- 62.2.2 equivalent in size and content for all candidates,
- 62.2.3 compiled and distributed in consultation with all of the candidates standing for election, and
- 62.2.4 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.

62.3 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

63 Information about candidates for inclusion with voting documents

63.1 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.

63.2 The information must consist of –

- 63.2.1 a statement submitted by the candidate of no more than 250 words, and
- 63.2.2 a photograph of the candidate.

64 Meaning of “for the purposes of an election”

64.1 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.

64.2 The provision by any individual of his or her own services voluntarily, on his or her 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

- 65** Application to question an election
- 65.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- 65.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 65.3 An application may only be made to the regulator by –
- 65.3.1 a person who voted at the election or who claimed to have had the right to vote, or
 - 65.3.2 a candidate, or a person claiming to have had a right to be elected at the election.
- 65.4 The application must –
- 65.4.1 describe the alleged breach of the rules or electoral irregularity, and
 - 65.4.2 be in such a form as the regulator may require.
- 65.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 65.6 If the regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 65.7 The regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the regulator.
- 65.8 The determination by the person or persons nominated in accordance with Rule 66.7 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.
- 65.9 The regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

66 Secrecy

66.1 The following persons –

66.1.1 the returning officer,

66.1.2 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 –

66.1.2.1 the name of any member of the corporation who has or has not been given voting information or who has or has not voted,

66.1.2.2 the unique identifier on any ballot paper,

66.1.2.3 the voter ID number allocated to any voter,

66.1.2.4 the candidate(s) for whom any member has voted.

66.2 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.

66.3 The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

67 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 or she has voted.

68 Disqualification

68.1 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 –

68.1.1 a member of the corporation,

68.1.2 an employee of the corporation,

68.1.3 a director of the corporation, or

68.1.4 employed by or on behalf of a person who has been nominated for election.

69 Delay in postal service through industrial action or unforeseen event

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

69.1 the delivery of the documents in rule 24, or

69.2 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 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 22)

1 Terms of Office of Council of Governors

Relevant Grouping	Number of Governors who shall serve 2 years	Number of Governors who shall serve 3 years
Staff Constituency – medical and dental staff	-	1
Staff Constituency – Nursing and midwifery staff	-	1
Staff Constituency – Scientific & Technical and Allied Health Professionals	-	1
Staff Constituency – Ancillary, administrative and other staff	-	1
Staff Constituency – Other eligible staff who are not employed by the Trust but are academic staff, volunteers and employees of independent contractors	-	1
Public – Guildford	1	2
Public – Waverley	1	2
Public – Woking	1	2
Public – Mole Valley	1	1
Public – East Hampshire	1	1
Public – Chichester		1
Public – Elmbridge		1
Public - Rest of England	-	2

2 Remuneration

Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer.

3 Vacancies

- 3.1 In the event of an Elected Governor's seat falling vacant for any reason before the end of the term of office it shall be filled by the second place candidate in the last held election for that seat provided that the second place candidate achieved at least five percent of the vote in the last held election for that seat. If that individual declines it shall be filled by the third place candidate provided that the third place candidate achieved at least five percent of the vote in the last held election for that seat (the "Reserve Governor"). If the vacancy is filled in this way the Reserve Governor shall be eligible to serve three terms (subject to re-election) including the partial term served subject to paragraph 14 of the Constitution.
- 3.2 In the event that a Reserve Governor is not available under paragraph 3.1 above, a by-election shall be held in accordance with the Model Rules for Election unless an election is due within 6 months in which case the seat shall stand vacant until the following scheduled election.
- 3.3 In the event of an Appointed Governor's seat falling vacant for any reason before the end of the term of office, the Trust will request that the relevant Other Partnership Organisation appoint a "Replacement Governor" within 30 days.
- 3.4 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

(Paragraph 18)

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GOVERNORS DECLARATION

INTERPRETATION

- 1 Save as otherwise permitted by law and subject to the Constitution, at any meeting the Chair shall be the final authority on the interpretation of the Standing Orders, with a right of appeal to a committee of the Council of Governors convened for that purpose, whose decision shall be final and binding except in case of manifest error.
- 2 Any expression to which a meaning is given in the National Health Service Act 2006 and other Acts relating to the National Health Service or in the Financial Regulations made under the Act or regulations made under it shall have the same meaning in this interpretation and in addition

Council of Governors and (unless the context requires otherwise) "Council"	The Council of Governors of the Trust as constituted by the Constitution
Board of Directors	Chair, Executive and Non-Executive Directors of the Trust collectively as a body
Chair of the Council or Chair of the Trust	Person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chair of the Trust" shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or otherwise unavailable
Chief Executive	Chief Executive Officer of the Trust
Constitution	The Constitution of the Trust
Executive Director	A member of the Board of Directors holding an executive office of the Trust
Lead Governor	A governor appointed by the Council of Governors whose role is more fully described at paragraph 2.3
Member of the Council	A Governor of the Trust. (Member of the Council in relation to the Council of Governors does not include the Chair)
Non-Executive Director	A member of the Board of Directors who does not hold an executive office of the Trust

SOs	Refers to the Standing Orders of the Council of Governors
Secretary	A person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Council and the Chair and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders
Deputy Chair	The Non-Executive Director appointed from amongst the Non-Executive Directors as Deputy Chair by the Council of Governors in accordance with the constitution to take on the Chair's duties if the Chair is absent for any reason

1 INTRODUCTION

1.1 Regulatory Framework

The Trust is a statutory body which became a public benefit corporation on .1 December 2009 following its approval as an NHS Foundation Trust by Monitor pursuant to the National Health Service Act 2006.

NHS Foundation Trusts are governed by Act of Parliament, the National Health Service Act 2006, by their constitutions, and by the terms of their licence granted by Monitor (the Regulatory Framework).

The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business.

All business of the Council of Governors will be conducted in the name of the Trust

2 THE COUNCIL OF GOVERNORS

2.1 Composition of the Council

The composition of the Council of Governors is set out in the constitution.

2.2 Role of the Chair

The Chair is not a member of the Council of Governors. Under the Regulatory Framework, the Chair presides at meetings of the Council of Governors.

Where the Chair ceases to hold office, or where he has been unable to perform his duties as Chair owing to illness or any other cause, the Deputy Chair (a Non-Executive Director appointed by the Council of Governors) shall act as Chair until a new Chair is appointed or the existing Chair resumes his duties, as the case may be. References to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his duties, be taken to include references to the Deputy Chair.

2.3 Lead Governor

2.3.1 The Council of Governors shall appoint one of the governors from any of the public governors to be the Lead Governor whose term of office will be 1 year.

2.3.2 The Lead Governor shall facilitate direct communication between the Council of Governors and Monitor where it is deemed necessary including where the Trust is at risk of significantly breaching the terms of its licence and the concern cannot be satisfactorily resolved, which may include but shall not be limited to the following circumstances:

2.3.2.1 Where Monitor has concerns as to the Board of Directors' leadership of the Trust and those concerns may in time lead to the use by Monitor's

Board of its formal powers to remove the Chair or Non-Executive Directors:

- 2.3.2.2 Where Monitor has been made aware that the process for appointment of the Chair or other members of the Board of Directors or elections for Governors or other material decisions, may not have complied with the Constitution or whilst complying with the Constitution, may be inappropriate or
- 2.3.2.3 Where any individual Governor wishes to contact Monitor (which he must do via the Lead Governor)
- 2.3.3 The Lead Governor shall take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action.
- 2.3.4 The Lead Governor's details will be provided to Monitor and updated as required.
- 2.3.5 Before responding to any consultations the Lead Governor will, where necessary, consult with governors.
- 2.3.6 Any governor appointed as Lead Governor may at any time resign from that office by giving notice to the Secretary and the Council of Governors may thereupon appoint another Lead Governor

3 MEETINGS OF THE COUNCIL

3.1 Calling meetings

- 3.1.1 Ordinary meetings of the Council of Governors shall be held at such times and places as the Chair may determine. Not less than 4 meetings will be held each year. One such meeting may be combined with the Annual Members' Meeting. Meetings will normally be held in public. However the Council may resolve to exclude the public where it wishes to discuss particular

issues in private session. For the avoidance of doubt, where a meeting of the Council of Governors is combined with the Annual Members' Meeting, the meeting of the Council of Governors must be open to members of the public.

- 3.1.2 The Chair may call meetings of the Council of Governors. 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 governors including at least two elected and two appointed governors, has been presented to him, or if, without so refusing, the Chair does not call a meeting within 7 days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more governors may forthwith call a meeting of the Council.

3.2 Notice of meetings

Before each meeting of the Council of Governors, a notice of the meeting 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 member of the Council, or sent by post to the usual place of residence of such governor, no less than five clear days in advance of the meeting

3.3 Notice of business to be transacted

- 3.3.1 Before each meeting of the Council of Governors, an agenda setting out the business of the meeting, signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his behalf shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such governor specifying the business proposed to be transacted at it so as to be available to the governor at least six clear days before the meeting, including weekends. Supporting papers, whenever possible, shall accompany the agenda, but will be dispatched no later than five clear days before the meeting save in an emergency.

- 3.3.2 Lack of service of the notice on any governor shall not affect the validity of a meeting.
- 3.3.3 In the case of a meeting called by the governors in default of the Chair, the notice shall be signed by those respective governors and no business shall be transacted at the meeting other than that specified in the notice
- 3.3.4 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission.

3.4 Setting the agenda

- 3.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an appendix to the Standing Orders.)
- 3.4.2 A governor desiring a matter to be included on an agenda shall make his request in writing to the Chair at least 15 clear days including weekends before the respective meeting. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chair

3.5 Attendance and questions from the public

- 3.5.1 The public shall be welcome at all meetings of the Council of Governors unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

3.5.2 Up to 15 minutes will be set aside at the end of each ordinary meeting to enable members of the public or other interested parties to ask questions of the Council. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Chair at least 10 days prior to the meeting.

3.5.3 Nothing in these standing orders shall require the Trust to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chair.

3.6 Chair of meeting

At any meeting of the Council, the Chair of the Council, if present, shall preside. If the Chair is absent from the meeting, or absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair, if there is one, and he is present, shall preside. If the Chair and Deputy Chair are absent, such Non-Executive Director as the Non-Executive Directors present shall choose, shall preside. Where the Chair, Deputy Chair, and other Non-Executive Directors are all absent or have a conflict of interest, the Deputy Chair (to be appointed from amongst the Council of Governors) shall preside at the meeting and shall have a casting vote

3.7 Notices of motion

3.7.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof signed by at least one other Governor at least 15 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. This paragraph shall not prevent any motion being moved during the meeting without notice, on any business mentioned on the agenda

- 3.7.2 Emergency Motions:- Subject to the agreement of the Chair, a Governor may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Council at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include or exclude the item shall be final.

3.8 **Motions: Procedure at and during a meeting**

3.8.1 Who may propose

A motion may be proposed by the Chair of the meeting or any Governor present. It must also be seconded by another Governor.

3.8.2 Contents of motions

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- 3.8.2.1 the reception of a report;
- 3.8.2.2 consideration of any item of business before the Council;
- 3.8.2.3 the accuracy of minutes;
- 3.8.2.4 that the Council proceed to next business;
- 3.8.2.5 that the Council adjourn;
- 3.8.2.6 that the question be now put.

3.8.3 Motion once under debate

When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

- 3.8.3.1 an amendment to the motion.

- 3.8.3.2 the adjournment of the discussion or the meeting.
- 3.8.3.3 that the meeting proceed to the next business. (*)
- 3.8.3.4 the motion be now put. (*)
- 3.8.3.5 that a Governor be not further heard;
- 3.8.3.6 a motion resolving to exclude the public, including the press

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

3.8.4 Amendments to motions

- 3.8.4.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.
- 3.8.4.2 Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Council. The Chair's decision on this will be final
- 3.8.4.3 If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

3.8.5 Rights of reply to motions

3.8.5.1 Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

3.8.5.2 Substantive/original motion

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

3.8.6 Time limits

The mover of a motion shall have a maximum of five minutes to propose the motion and three minutes to reply. Once a proposition has been proposed, no Governor shall speak more than once or for more than three minutes

3.9 **Withdrawal of motion or amendments**

A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and consent of the Chair.

3.10 **Motion to rescind a resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the governor who gives it and also the signature of 4 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 6 months, however the Chair may do so if he/she considers it appropriate.

- 3.11 If a Governor persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the Governor be not heard further. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

3.12 **Chair's ruling**

Statements of governors made at meetings of the Trust 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 final.

3.13 **Voting**

Except in relation to matters to be voted on pursuant to paragraph 47.1 of this Constitution, in relation to which participation and voting by telephone, teleconference, and video or computer link shall be permitted, questions arising at a meeting of the Council of Governors shall be decided by a show of hands. A paper ballot may also be used if a majority of the Governors present so request, in which case any person attending by telephone, teleconference, video or computer link shall cast their vote verbally (such verbal vote to be recorded in the minutes). At the discretion of the Chair, voting may be undertaken by an independent elections agent.

3.14 **E-Governance –**

- a) Where agreed by the Chairman and Council of Governors, decisions may be made by way of E-Governance.
- b) The document in need of review should be sent via e-mail and Council members should have a specified number of days to register their approval via e-mail to the Secretary. The document should not require extensive discussion, although Council members may choose to ask specific questions to the document author. The document will require a cover sheet, clearly specifying the approval that is sought.
- c) A document will be considered approved when a majority of the Council of Governors have approved the document. In the event of an evenly split vote, the Lead Governor shall have the casting vote. Notice of all decisions taken by E-Governance will be reported to the following formal Council meeting at which point they are confirmed.

- d) 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.
- e) If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- f) In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

3.15 Minutes

- 3.15.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next meeting where they will be signed by the Chair or person presiding
- 3.15.2 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
- 3.15.3 Minutes shall be circulated in accordance with the Council's wishes. Where providing a record of a public meeting the minutes shall be made available to the public

3.16 Waiver of standing orders

- 3.16.1 These standing orders shall not be waived except:
 - 3.16.1.1 where urgent action is required and the Chair considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so, subject to such action being reported to and ratified by the next meeting of the Council
 - 3.16.1.2 upon a notice of motion under Standing Order 3.12
 - 3.16.1.3 at least 11 Governors are present of whom at least 6 must be elected public Governors

3.16.2 A decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council of Governors

3.16.3 All waivers of Standing Orders shall be reported to the Audit Committee. The Committee shall review every decision to waive the Standing Orders

3.17 Variation and amendment of standing orders

These Standing Orders may only be amended in accordance with paragraph 46 of the constitution.

3.18 Record of attendance

The names of the Chair and governors, and any invited attendees present at the meeting shall be recorded in the minutes

3.19 Quorum

3.19.1 No business shall be transacted at a meeting of the Council of Governors unless at least 11 are present of whom at least 6 must be elected public Governors. If insufficient members to constitute a quorum are in attendance within 30 minutes of the time fixed for a meeting, the meeting will stand adjourned for 7 days and at the reconvened meeting those present will constitute a quorum.

3.19.2 If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution because of the declaration of a conflict of interest he 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

4 DELEGATION OF FUNCTIONS AND STATUS OF STANDING ORDERS

4.1 Delegation of functions and powers

The Council of Governors may not delegate any of its functions or powers to an individual, group, committee or subcommittee, but it may appoint groups consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any working group they appoint in carrying out its duties.

4.2 Non-Compliance with Standing Orders

If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council for action or ratification. All members of the Council have a duty to disclose any non-compliance with these Standing Orders to the Secretary as soon as possible.

5 WORKING GROUPS

5.1 Nominations Committee

5.1.1 The Council shall appoint a Nominations Committee to regularly review the structure, size, and composition of the Board of Directors and make recommendations for changes where appropriate.

5.1.2 The Council of Governors shall agree with the Nominations Committee a clear process for the nomination of a new Chair and non-executive directors. Once suitable candidates have been identified the Nominations Committee shall make recommendations to the Council of Governors.

5.1.3 The Chair of the Trust will chair the Nominations Committee. Where the Nominations Committee is considering the appointment of the Chair it shall be chaired by a Governor agreed by the committee.

- 5.1.4 The Nominations Committee(s) will operate in accordance with guidance set out in the NHS Foundation Trust Code of Governance issued by Monitor, or as shall from time to time be further issued by Monitor.

5.2 Appointment of Auditors

- 5.2.1 The Council of Governors shall create a duly authorised Committee which shall be composed of two public governors, a staff governor and an appointed governor (the Audit Working Group).
- 5.2.2 The Audit Working Group will consult the Chair of the Audit Committee, Non- Executive Directors and the Chief Executive regarding the necessary skills required.
- 5.2.3 The Audit Committee shall then run a formal procurement process in accordance with the Trust's own procurement rules and any existing auditor seeking re-appointment will be treated in the same manner as all other candidates.
- 5.2.4 The Audit Committee will liaise with the Audit Working Group to provide a shortlist of at least two appointable candidates where possible.
- 5.2.5 The Audit Committee and the Audit Working Group shall then present their joint recommendations to the Council of Governors.
- 5.2.6 The Council of Governors shall formally convey their decision to the successful firm's representatives and to the Chair of the Audit Committee and the Chief Executive.
- 5.2.7 The terms and engagement of the auditor must be approved by the Audit Committee.

5.3 Confidentiality

- 5.3.1 A member of a working group shall not disclose a matter dealt with by, or brought before, the working group without its

permission until the working group has reported to the Council or shall otherwise have concluded on that matter.

5.3.2 A governor of the Trust shall not disclose any matter reported to the Council or otherwise dealt with by a working group, notwithstanding that the matter has been reported or action has been concluded, if the Council or the working group has resolved that it is confidential.

5.3.3 A governor of the Trust shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the meeting which may take place on such reports or papers.

6 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declarations of Interest

Each Governor shall upon being elected or appointed shall declare any to the Council of Governors via the Secretary any pecuniary (which includes monetary) interests, personal or family interests that he has which are relevant to the Trust.

6.2 Interests that should be declared pursuant of 6.1 above include:

6.2.1 directorships, including Non-Executive directorships held in private companies or PLCs (with the exception of those of dormant companies);

6.2.2 majority or controlling share holdings in organisations, or ownership or part-ownership of private companies, businesses or consultancies likely or possible to do business with the NHS;

6.2.3 a position of authority in a charity or voluntary organisation in the field of health and social care;

6.2.4 any connection with a voluntary organisation or other organisation that is seeking to contract or has contracted for

the NHS services or for the provision of the Trust's mandatory or authorised services; and

6.2.5 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders and banks.

6.3 No governor should be treated as having an interest in any contract, proposed contract or other matter by reason of:

6.3.1 of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body; or

6.3.2 of an interest in any company, body, person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in the consideration or discussion of, or in voting on, any question with respect to that contract, proposed contract or other matter.

6.4 Interests which should be regarded as 'relevant and material' are set out in paragraph 20 of the Trust's constitution:

6.5 At the time Council members' interests are declared, they should be recorded in the Council's minutes. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring. It is the obligation of the Governor to notify the Secretary in writing within seven days of becoming aware of the existence of an interest. The Secretary will amend the Register upon receipt within three working days.

6.6 Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

- 6.7 During the course of a meeting, if a conflict of interest is established, the member of the Council concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.8 There is no requirement for the interests of Council members' spouses or partners to be declared. However, if the Council members' spouses or partners, if living together, have any pecuniary interest, direct or indirect, in contracts or proposed contracts with the Trust, this is regarded as relevant and should be disclosed.
- 6.9 If members have any doubt about the relevance of an interest this should be discussed with the Chair or the Secretary.

6.10 **Register of Interests**

The Secretary will ensure that a Register of Interests is established to record formal declarations of interests of Governors.

- 6.11 The details on the register will be reviewed every six months.
- 6.12 The register will be available to the public and can be viewed on the Trusts public website.
- 6.13 In establishing, maintaining, updating and publicising the register, the Trust will comply with all guidance issued from time to time by Monitor.

7 **STANDARDS OF BUSINESS CONDUCT**

- 7.1 Governors must comply with the Constitution, the NHS Foundation Trust Code of Governance, Trust's values, the Trust's code of conduct, Trust's policy on Standards of Business Conduct and the requirements of the Regulatory Framework and any binding guidance issued by Monitor.
- 7.2 Canvassing of and recommendations by, members of the Council in relation to appointments
- 7.3 Canvassing of directors or governors of the Trust or of any committee of the Trust directly or indirectly for any appointment with the Trust shall disqualify the candidate for such appointment. This clause of the Standing Orders shall be brought to the attention of candidates.

7.4 A member of the Council shall not solicit for any person any appointment with the Trust or recommend any person for such appointment. This clause of the Standing Orders shall not preclude a member of the Council from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

7.5 Informal discussions outside appointments panels or committees, whether solicited or unsolicited should be declared to the panel or the committee.

7.6 Relatives of Governors

Candidates for any staff appointment under the Trust shall when making an application disclose in writing whether they are related to any Governor.

Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

7.7 Every Governor of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

7.8 On election or appointment, Governors should disclose to the Trust whether they are related to any other Governor or Officer. This disclosure will be asked for when Governors sign their declaration of eligibility to vote prior to their first Council of Governors meeting.

7.9 Where the relationship to a Governor is disclosed, the Standing Order headed 'conflict of interest and pecuniary interest should apply (Standing Order 8).

8 DECLARATION OF ELIGIBILITY

8.1 Prior to the date of authorisation of the Trust by Monitor, in accordance with its terms of Authorisation, all governors (elected and appointed) shall be required to sign a declaration of their right to represent their constituency or nominating organisation, as the case may be, and vote at Council of Governors' meetings. All governors appointed or elected after the date

of authorisation of the Trust by Monitor shall be required to make such a declaration on the day of their appointment or election.

- 8.2 The declaration referred to in paragraph 8.1 above shall be in the form attached at Part 1.

9 DISPUTE RESOLUTION PROCEDURES

- 9.1 Provisions to establish procedures for the resolution of disputes are set out in Annex 9 of the Trust's constitution.
- 9.2 Disputes shall be referred in the first instance to the Chair of the Council of Governors.
- 9.3 If appropriate the Chair may refer the dispute to a panel of the Nominations Committee of the Council of Governors (the composition of which will be determined by the Chair) to conduct a preliminary investigation and review in order to advise the full Council of Governors.
- 9.4 Any unresolved dispute is to be submitted to an arbitrator agreed by the parties or nominated in default of agreement by decision of the Council and Board of Directors. The arbitrator's decision will be binding and conclusive on all parties

10 MISCELLANEOUS

10.1 Standing Orders to be given to members of the Council

It is the duty of the Secretary to ensure that existing and new members of the Council are notified and understand their responsibilities within the constitution and these standing orders.

10.2 Review of Standing Orders

These Standing Orders shall be reviewed at least every three years, and more often if there are changes in the Regulatory Framework.

PART 1

GOVERNORS' DECLARATION

ROYAL SURREY NHS FOUNDATION TRUST (the "Trust")

I,(insert name)

Of (insert address

Hereby declare that I am entitled to: -

- (a) be elected to the Council of Governors as a Governor elected by *one of the public constituencies/ the staff constituencies** because I am a member of one of the *public constituencies/ staff constituencies **; or
- (b) be appointed to the Council of Governors as a governor because I have been appointed by a nominating organisation in accordance with paragraph 12 of the Constitution;

and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under paragraph 15 of the Constitution of the Trust and that I am entitled to vote at meetings of the Council of Governors as a governor pursuant to such appointment or election.

Signed

Print Name

Date of Declaration

*delete as appropriate

ANNEX 7

ADDITIONAL PROVISIONS – BOARD OF DIRECTORS

ANNEX 8

STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

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6 DECLARATIONS OF INTEREST AND REGISTER OF INTEREST

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7 CONFLICTS OF INTEREST

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- (a) Policy
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9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- (a) Custody of Seal

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- 10** SIGNATURE OF DOCUMENTS
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 - (a) Standing Orders to be given to Directors and Officers
 - (b) Documents having the Standing of Standing Orders
 - (c) Review of Standing Orders

INTRODUCTION

Regulatory Framework

Royal Surrey NHS Foundation Trust (the Trust) is a public benefit corporation which was incorporated on 1 December 2009 following its approval as an NHS Foundation Trust by Monitor pursuant to the National Health Service Act 2006 (the 2006 Act).

The principle place of business of the Trust is Royal Surrey, Guildford, Surrey.

The Trust is governed by the 2006 Act, by its constitution and by the terms of its licence granted by Monitor.

Reservation and Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit.

1 INTERPRETATION

- 1.1 Save as permitted by law and subject to the Constitution, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive or Secretary).
- 1.2 Any expression to which a meaning is given in the 2006 Act or in the Regulations or Orders made under the 2006 Act shall have the same meaning in this interpretation and where there is a conflict between the 2006 Act and another legislative provision the 2006 Act interpretation shall prevail (unless, in either case, the context otherwise requires) and in addition:

"Accounting officer" shall be the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets and performing the functions delegated to him by the Constitution in relation to the Trust's accounts. For this Trust it shall be the Chief Executive.

"Trust" means Royal Surrey NHS Foundation Trust.

"Board of Directors" and (unless the context otherwise requires)

"Board" shall mean the Chair and other non-executive directors, and the executive directors appointed by the relevant committee of the Trust.

"Council of Governors" means the Council of Governors of the Trust.

"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 to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chair of the Trust" shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

"Chief Executive" shall mean the Chief Executive Officer of the Trust.

"Committee" shall mean a committee of the Board of Directors.

"Committee Members" shall be the directors formally appointed by the Trust to sit on or to chair specific committees.

"Constitution" means the constitution of the Trust.

"Contract" shall include any proposed contract or other course of dealing.

"Deputy Chair" means the non-executive director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason.

"Director" shall mean a person appointed as a director in accordance with the Constitution and includes the Chair.

"Finance Director" shall mean the chief finance officer of the Trust.

"Funds held on Trust" shall mean those funds which the Trust holds on trust at its date of authorisation as an NHS Foundation Trust or chooses subsequently to accept. Such funds may or may not be charitable.

"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 (SOs) and Standing Financial Instructions (SFIs).

"Officer" means an employee of the Trust.

"**SFIS**" means Standing Financial Instructions.

"**SOS**" means Standing Orders.

"**Spouse**" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse)

"**Secretary**" means a person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust's compliance with the Regulatory Framework and these standing orders

2 THE BOARD OF DIRECTORS

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

2.2 The Trust has the functions conferred on it by the Regulatory Framework.

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

2.4 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission.

2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. Those powers and decisions delegated by the Board are set out in the "Scheme of Delegation", which has effect as if incorporated into the Standing Orders.

2.6 **Composition of the Board** - In accordance with, but always subject to the provisions of the Constitution, the composition of the Board shall be:

2.6.1 The Chair of the Trust

2.6.2 Up to seven other non-executive directors, but not less than four in addition to the Chair - Up to seven but not less than four executive directors including:

2.6.3 The Chief Executive (and Accounting Officer)

2.6.4 The Director of Finance

- 2.6.5 A medical or dental practitioner
- 2.6.6 A registered nurse or registered midwife.
- 2.7 **Appointment of the Chair and other Non-Executive Directors** - The Chair and the other Non-Executive Directors are appointed by the Council of Governors. Subject to the provisions within this constitution in relation to the appointment and removal of the Chair, the Chair shall be appointed in accordance with the process of open competition.
- 2.8 **Appointment of the Executive Directors** - The Chief Executive is appointed by the Chair and other Non-Executive Directors, subject to the approval of the Council of Governors. The other Executive Directors are appointed by the Appointments Committee that the Board shall appoint from time to time for that purpose.
- 2.9 **Terms of Office of the Chair and other Non-Executive Directors** - The regulations setting out the period of tenure of office of the Chair and other Non-Executive Directors and for the termination or suspension of office of the Chair and other Directors are contained in the Constitution of the Trust.
- 2.10 **Appointment of Deputy Chair** - Subject to SO 2.11 below, the Council of Governors will appoint one of the Non-Executive Directors to be Deputy Chair, for such period, not exceeding the remainder of his term as a Director, as they may specify on appointing him/her.
- 2.11 Any Director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy Chair in accordance with the provisions of Standing Order 2.10
- 2.12 **Powers of Deputy Chair** - Where the Chair of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his duties, be taken to include references to the Deputy Chair.
- 2.13 **Appointment and Powers of Senior Independent Director** - Subject to SO 2.14 below, the Chair (in consultation with the Non-Executive Directors and the

Council of Governors) may appoint any Director, who is also a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of his term as a Director, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board.

2.14 Any Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Chair (in consultation with the Non-Executive Directors and the Council of Governors) may thereupon appoint another Member of the Board as Senior Independent Director in accordance with the provisions of Standing Order 2.13.

2.15 The posts and duties of the Deputy Chair and Senior Independent Director will not be combined. This decision may be reviewed at any time by the Board of Directors, in consultation with the Council of Governors.

2.16 The role of the Senior Independent Director will include acting as a conduit for concerns to be raised by governors if the usual mechanisms of contact and discussion have been exhausted and, subject to the agreement of the Council of Governors, making arrangements for the annual evaluation of the performance of the Chair. The process to achieve this evaluation and its outcome will be agreed with and reported to the Council of Governors.

2.17 Joint Executive Directors

Where more than one person is appointed jointly to an Executive Director post those persons shall count as one person for the purposes of these standing orders: -

2.17.1 either or both of those persons may attend or take part in meetings of the Board;

2.17.2 if both are present at a meeting they should cast one vote if they agree;

2.17.3 in the case of disagreements, no vote should be cast;

2.17.4 the presence of either or both of those persons should count as the presence of one person for the purposes of a quorum.

2.18 Role of Directors

The Board will function as a corporate decision-making body, Executive and Non-Executive Directors will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

2.18.1 Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accounting Officer Memorandum for Trust Chief Executives.

2.18.2 Non-Executive Directors

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

2.18.3 Chairman

The Chairman shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

2.19 Corporate role of the Board

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

2.19.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.

2.20 Schedule of Matters reserved to the Board and Scheme of Delegation

The Board may resolve that certain powers and decisions be exercised only by the Board. These powers and decisions are set out in the Schedule of Matters

Reserved to the Board and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

3 MEETINGS OF THE BOARD OF DIRECTORS

- 3.1 Calling Meetings** - Ordinary meetings of the Board shall be held in public at such times and places as the Board may determine unless the Board decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chair shall give such directions as he thinks fit in regard to the arrangements for the accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without interruption and disruption. The Chair may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting. The public and representatives of the press will be required to withdraw from any meeting upon the Board of Directors resolving as follows:

“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”

Or:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public

Nothing in these SOs shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.

- 3.2** 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, at the Trust's Headquarters, such one third or more directors may forthwith call a meeting.

- 3.3 **Notice of Meetings** - Before each meeting of the Board, 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 behalf 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 at least six clear days before the meeting. The agenda will be sent to Directors six days before the meeting, including weekends. Supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.
- 3.4 Lack of service of the notice on any director shall not affect the validity of a meeting.
- 3.5 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.
- 3.6 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or otherwise the day following electronic or facsimile transmission.
- 3.7 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting of the Board.
- 3.8 A director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 15 clear days before the meeting, subject to Standing Order 3.3. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.9 **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, if there is one and he/she is present, shall preside. If the Chair and Deputy Chair are absent such non-executive director as the directors present shall choose shall preside.
- 3.10 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and

Deputy Chair are absent, or are disqualified from participating, such non-executive director as the directors present shall choose shall preside.

- 3.11 **Notices of Motion** - A director of the Board desiring to move or amend a motion shall send a written notice thereof at least 15 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.

Emergency Motions: - Subject to the agreement of the Chair, a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include or exclude the item shall be final.

- 3.12 Motions: Procedure at and during a meeting

3.12.1 Who may propose

A motion may be proposed by the Chair of the meeting or any member present. It must also be seconded by another member.

3.12.2 Contents of motions

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- 3.12.2.1 the reception of a report;
- 3.12.2.2 consideration of any item of business before the Trust Board;
- 3.12.2.3 the accuracy of minutes;
- 3.12.2.4 that the Board proceed to next business;
- 3.12.2.5 that the Board adjourn;
- 3.12.2.6 that the question be now put.

3.12.3 Motion once under debate

When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:

- 3.12.3.1 An amendment to the motion.
- 3.12.3.2 The adjournment of the discussion or the meeting.
- 3.12.3.3 That the meeting proceed to the next business. (*)
- 3.12.3.4 The appointment of an ad hoc committee to deal with a specific item of business.
- 3.12.3.5 the motion be now put. (*)
- 3.12.3.6 that a member/director be not further heard;
- 3.12.3.7 - a motion resolving to exclude the public, including the press

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a director who has not previously taken part in the debate.

3.12.4 Amendments to motions

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board. The Chair's decision on this will be final

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

3.12.5 Rights of reply to motions

3.12.5.1 Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the

close of debate on the amendment, but may not otherwise speak on it.

3.12.5.2 Substantive/original motion

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

- 3.13 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer
- 3.14 **Motion to Rescind a Resolution** - 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 director(s) who gives it and also the signature of three other directors. Before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation. 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 he considers it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.
- 3.15 **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, relevance, regularity and any other matters shall be observed at the meeting.
- 3.16 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question. In the case of any equality of votes, the Chair shall have a further or casting vote.
- 3.17 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A secret paper ballot may also be used if a majority of the directors present so request.
- 3.18 If at least one-third of the directors present so request, the voting (other than by secret paper ballot) on any question may be recorded to show how each director present voted or abstained.

3.19 If a director so requests, his vote shall be recorded by name upon any vote (other than by secret paper ballot).

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

A manager who has been formally appointed 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

A manager attending the Board meeting 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.

For the voting rules relating to joint Executive Directors see Standing Order 2.17

3.21 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

3.22 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.

3.23 **Waiver of Standing Orders** - Except where this would contravene any statutory provision or any guidance issued by Monitor, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and two Non-Executive Directors, and that a majority of those present vote in favour of suspension.

3.24 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.

3.25 The Audit Committee shall review every decision to waive Standing Orders.

3.26 **Suspension of Standing Orders** - Except where this would contravene any statutory provision or any guidance issued by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive director and two non-

executive directors, and that a majority of those present vote in favour of suspension.

- 3.27 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.28 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the directors.
- 3.29 No formal business may be transacted while Standing Orders are suspended.
- 3.30 The Audit Committee shall review every decision to suspend Standing Orders.
- 3.31 **Variation and Amendment of Standing Orders** - These Standing Orders may only be amended in accordance with paragraph 46 of the constitution.
- 3.32 **Record of Attendance** - The names and titles of the directors present at the meeting shall be recorded in the minutes.
- 3.33 **Quorum** - No business shall be transacted at a meeting of the Board unless at least one third of the whole number of the directors are present including at least one executive director and two non-executive directors.
- 3.34 If a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6) he/she 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. The above requirement for at least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example, when the Board considers the recommendations of the Remuneration Committee).
- 3.35 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.36 Admission of public and the press

3.35.1 Admission and exclusion on grounds of confidentiality of business to be transacted

The public and representatives of the press shall be required to withdraw from any meeting of the Board when the Board resolves as follows:

'that representatives of the press, and other members of the public, be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest.'

Guidance may be sought from the Trust's Freedom of Information Lead to ensure correct procedure is followed on matters to be included in the exclusion.

3.35.2 General disturbances

The Chair (or Deputy Chair if one has been appointed) or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:

'That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete its business without the presence of the public'.

3.35.3 Business proposed to be transacted when the press and public have been excluded from a meeting

Matters to be dealt with by the Board following the exclusion of representatives of the press, and other members of the public, as provided in (i) and (ii) above, shall be confidential to the Directors.

Directors or any employee of the Trust in attendance shall not reveal or disclose the contents of papers or minutes then discussed, without

the express permission of the Chair or Chief Executive. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

3.35.4 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings

Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Board or Committee thereof. Such permission shall be granted only upon resolution of the Board of Directors.

3.36 Observers at Board meetings

The Board will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 In accordance with Paragraph 15 of Schedule 7 to the 2006 Act the powers of the Trust shall be exercisable by the Board on its behalf, save that (and subject to the Regulatory Framework and such guidance as may be issued by Monitor) the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee of Directors of the Trust, appointed by virtue of SO 5.1 or 5.2 below or by an executive director of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (SO 2.5) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair, after having consulted two Non-Executive directors where possible. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for formal ratification.

4.3 E-Governance

4.3.1 Where agreed by any of the office holders described at paragraph 4.2 above decisions may also be made by way of e-governance.

- 4.3.2 In such cases the document or issue in need of review should be sent via e-mail and the Board of Directors should have a specified number of days to register their approval via email to the Secretary. The document should not require extensive discussion, although the Board of Directors may choose to ask specific questions to the document author. The email will need to clearly specify the approval that is sought.
- 4.3.3 A document or issue will be considered approved when the majority of the Board of Directors has approved it. As in a Board meeting, the Chair shall have the casting vote in the event of an evenly split vote. Notice of all decisions taken by e-governance will be reported to the following formal Board or Committee meeting.
- 4.4 **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, which it has formally constituted. The constitution and terms of reference of these committees, or subcommittees, and their specific executive powers shall be approved by the Board.
- 4.5 **Delegation to officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committees or sub-committees or joint-committees shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Trust.
- 4.6 The Chief Executive shall prepare a Schedule of Matters reserved to the Board and a Scheme of Delegation identifying his/her proposals which 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 Schedule of Matters reserved to the Board and Scheme of Delegation which shall be considered and approved by the Board as indicated above.
- 4.7 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director or other executive director to provide information and advise the Board in accordance with any statutory requirements or guidance issued by Monitor. Outside these statutory

requirements the roles shall be accountable to the Chief Executive for operational matters.

- 4.8 The arrangements made by the Board as set out in the Schedule of Matters reserved to the Board and Scheme of Delegation shall have effect as if incorporated in these Standing Orders.
- 4.9 Overriding Standing Orders – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Board Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive or Chair of the Audit Committee as soon as possible.

5 COMMITTEES

- 5.1 **Appointment of Committees** - Subject to the Regulatory Framework and any guidance as may be issued by Monitor, the Board may and, if so required by Monitor, shall appoint committees of the Board, consisting wholly of directors of the Board. The Trust shall determine the membership and terms of reference of these committees and shall if it requires to, receive and consider reports from them. There is no requirement to hold meetings of committees established by the Trust in public.
- 5.2 A committee appointed under SO 5.1 may, subject to any guidance issued by Monitor and to any restriction imposed by the Board, appoint subcommittees consisting wholly of one or more members of the committee.
- 5.3 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board.
- 5.4 Each such committee or sub-committee shall have such terms of reference and powers, reviewed annually, and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.

- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted
- 5.7 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 5.8 A Director shall not disclose any matter reported to the Board or otherwise dealt with by 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.

5.9 Committees established by the Board of Directors

The Board shall establish committees required of it by legislation or Monitor's NHS Foundation Trust Code of Governance. These will include: -

5.9.1 Audit Committee

In line with legislation and the Code of Governance, the Board of Directors will establish and constitute an Audit Committee to provide the Board with an independent and objective review of its financial and internal control systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The terms of reference will be approved by the Board and reviewed on an annual basis.

The Audit Committee will be composed of a minimum of three independent non-executive directors, of which one must have significant, recent and relevant financial experience.

5.9.2 Board Remuneration Committee

A Board Remuneration Committee will be established and constituted by the Board of Directors, comprised of a minimum of three independent non-executive directors. The terms of reference of the Committee will be approved by the Board and reviewed on an annual basis.

The purpose of the Committee will be to make recommendations on the appropriate remuneration, allowances, and terms of and

conditions of service for the Chief Executive and other Executive Directors including:

- 5.9.2.1 all aspects of salary (including any performance-related elements/bonuses);
- 5.9.2.2 provisions for other benefits, including pensions and cars;
- 5.9.2.3 arrangements for termination of employment and other contractual terms;
- 5.9.2.4 nominations for appointment of executive directors.

The Committee may also recommend and monitor the level and structure of remuneration for senior management.

5.9.3 Trust and Charitable Funds Committee

In line with its role as a corporate trustee for any funds held in trust, either as charitable or non charitable funds, the Board will establish a Trust and Charitable Funds Committee to administer those funds in accordance with any statutory or other legal requirements or best practice required by the Charities Commission.

5.9.4 Appointments Committee

The Board shall appoint from time to time an Appointments Committee comprised of the Chairman, the other Non-Executive Directors and the Chief Executive. The purpose of the Appointments Committee shall be to appoint the Executive Directors other than the Chief Executive.

5.9.5 Other Committees

The Board may also establish such other committees as required to discharge its responsibilities, for example a Finance Committee and a Quality Committee

6 DECLARATIONS OF INTEREST AND REGISTER OF INTERESTS

- 6.1 **Declaration of Interests** - Each Director shall upon being appointed declare any interests to the Board of Directors via the Secretary any pecuniary (which

includes monetary), personal or family interests that he has which are relevant to the Trust.

- 6.2 Interests which should be declared pursuant of 6.1 above include:
- 6.2.1 directorships, including non-executive directorships held in private companies or PLCs (except for those of dormant companies);
 - 6.2.2 majority or controlling holdings in organisations, or ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the Trust or the NHS;
 - 6.2.3 a position of authority in a charity or Voluntary Organisation in the field of health and social care;
 - 6.2.4 any connection with a Voluntary Organisation or other organisation that is seeking to contract or has contracted for NHS services or for the provision of the Trust's mandatory or authorised services; and
 - 6.2.5 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 6.3 No Director shall be treated as having an interest in any contract, proposed contract or other matter by reason only:
- 6.3.1 of his membership of a company or other body if he has no beneficial interest in any securities or that company or other body;
 - 6.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in the consideration or discussion or, or in voting on, any question with respect to that contract, proposed contract or other matter.
- 6.4 Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered. If directors have any doubt about the relevance of an interest, this should be discussed with the Chair, or the Secretary.

- 6.5 At the time directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next board meeting following the change occurring. It is the obligation of the Director to inform the Secretary in writing within seven days of becoming aware of the existence of an interest. The Secretary shall amend the Register upon receipt within three working days.
- 6.6 This Standing Order applies to Committees and sub-Committees as it applies to the Board of Directors and applies to a member of any such Committee or sub-Committee (whether or not he is also a Director) as it applies to a Director.
- 6.7 Directors' directorships of companies likely or possibly seeking to do business with the Trust or NHS should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.8 During the course of a board meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.9 ***Register of Interests - The Secretary will ensure that a Register of Interests (the "Register") is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and interests which have been declared by both executive and non-executive directors. Attendees of Board Committees who are not Board directors will also be required to declare any such interests.***
- 6.10 These details on the Register shall be reviewed and kept up to date on a regular basis, and the Register will be formally reviewed once a year.
- 6.11 The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.12 In establishing, maintaining, updating and publicising the Register, the Trust shall comply at all times with the Regulatory Framework and any guidance issued by Monitor. In the event of conflict between these Standing Orders and the Regulatory Framework, the latter shall prevail.

- 6.13 Standing Order 6 applies to a committee or sub-committee of the Board as it applies to the Board and applies to all members of any such committee or sub-committee whether or not he or she is also a Director.

7 CONFLICTS OF INTEREST AND PECUNIARY INTERESTS

7.1 Conflicts of Interest

During the course of a Board of Directors meeting, if a conflict of interest is disclosed, the Director concerned shall withdraw from the meeting and take no further part in the matter under discussion.

- 7.2 Any remuneration, compensation or allowances payable to the Chair or a Director by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.

7.3 Where the Director:

7.3.1 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

7.3.2 the total nominal value of those securities does not exceed £5000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and

7.3.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

- 7.4 this standing order shall not prohibit him from taking part in the consideration of discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.

- 7.5 This Standing Order applies to a Committee or sub-Committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such Committee or sub-Committee as it applies to a Director.

8 STANDARDS OF BUSINESS CONDUCT

- 8.1 **Policy** - Staff must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff', the Trust's Standards for Business Conduct, and any guidance issued by Monitor. In addition, they must

adhere to the Trust's Counter Fraud Policy and Procedure for Staff, and any other guidance produced by the Trust.

- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Chief Executive will ensure that such declarations are formally recorded.
- 8.4 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** –Canvassing of directors or governors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.5 A director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.7 **Relatives of Directors or Officers** - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

- 8.8 The directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.9 On appointment, directors (and prior to acceptance of an appointment in the case of executive directors) should disclose to the Trust whether they are related to any other director or holder of any office within the Trust.
- 8.10 Where the relationship of an officer or another director to a director of the Trust is disclosed, Standing Order 6 shall apply.

9 DIRECTORS ACTING AS TRUSTEE

All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust. Directors acting on behalf of the Trust as a corporate trustee are acting as a quasi-trustee. Accountability for charitable funds held on trust is to the Charity Commission and to Monitor. Accountability for non-charitable funds held on trust is only to Monitor.

10 TENDERING AND CONTRACT PROCEDURE

- 10.1 **Duty to comply with Standing Orders** – the procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except Standing Order 3.26 (suspension of standing orders) is applied).
- 10.2 **Contracts** – The Board of Directors may enter into contracts on behalf of the Trust within its statutory powers and shall comply with:
- 10.2.1 these Standing Orders
 - 10.2.2 the Trust's SFIs; and
 - 10.2.3 the terms of Authorisation.
- 10.3 **Personal and agency or temporary staff contracts** – the chief Executive shall nominate Officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.
- 10.4 **Contracts involving funds held on trust** – such contracts involving charitable funds shall comply with the requirements of the Charities Act.

11 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 11.1 Custody of Seal** - The Common Seal of the Trust shall be kept by the Secretary in a secure place.
- 11.2 Sealing of Documents** -. Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Directors of the Board, not from the originating department, and shall be attested by them. A report of all sealings shall be made to the Trust Board at least half-yearly.
- 11.3 Register of Sealing** – The Secretary shall keep a register in which he/she, or another manager of the Trust authorised by him/her, shall enter a record of the sealing of every document.
- 11.4** The Seal should be used to execute deeds (e.g. conveyances of land) or where otherwise required by law.

12 SIGNATURE OF DOCUMENTS

- 12.1** Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive or his nominated deputy, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 12.2** In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed), which may only be signed by the Chief Executive or his nominated deputy with a second Director as in 9.2 for documents requiring sealing.

13 MISCELLANEOUS

- 13.1 Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.

- 13.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions, the Schedule of Matters reserved for the Board, and Scheme of Delegation shall have the effect as if incorporated into Standing Orders.
- 13.3 **Review of Standing Orders** - these standing orders shall be reviewed annually by the Board of Directors. The requirement for review extends to all documents having effect as if incorporated in these standing orders.
- 13.4 **Dispute Resolution** – where a dispute arises out of or in connection with the Constitution, including the interpretation of these standing orders and the procedure to be followed at meetings of the Board of Directors, the Trust and the parties to the dispute shall use all reasonable endeavours to resolve the dispute as quickly as possible.
- 13.5 Where a dispute arises which involves the Chair, the dispute shall be referred to the Senior Independent Director who will use all reasonable efforts to mediate a settlement to the dispute.
- 13.6 For the avoidance of doubt, the Secretary shall deal with any membership queries and other similar questions in the first place including any voting or legislation issues and shall otherwise follow a process for resolving such matters with any procedures agreed by the Board of Directors.

ANNEX 9 – FURTHER PROVISIONS

1 Indemnity

- 1.1 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 Council of Governors or Board of Directors functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 1.2 The Trust must make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors and Directors to meet all or any liabilities which are properly the liabilities of the Trust under the paragraph above.

2 Dispute Resolution Procedures

- 2.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 2.2 In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.
- 2.3 In the event of dispute between the Council of Governors and the Board of Directors:
- 2.3.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
 - 2.3.2 if the Chair is unable to resolve the dispute he or she shall refer the dispute to the Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
 - 2.3.3 if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

3 Amendment of the Constitution

The Trust may make amendments to this Constitution in accordance with paragraph 46 of the Constitution.

ANNEX 10 – ANNUAL MEMBERS’ MEETINGS

1 Interpretation

- 1.1 Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:
- 1.1.1 CHAIR is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole.
 - 1.1.2 MEMBER means a person who is a member of the Trust and whose name has been entered in the register of members.
 - 1.1.3 OFFICER means an employee of the Trust.
 - 1.1.4 TRUST means Royal Surrey NHS Foundation Trust.
- 1.2 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of these Standing Orders (on which he/she shall be advised by the Chief Executive or the Secretary).

2 General Information

- 2.1 The purpose of the Standing Orders for Annual Members’ Meetings is to ensure that the highest standards of corporate governance and conduct are applied to all Annual Members’ Meetings.
- 2.2 All business shall be conducted in the name of the Trust.

3 Attendance

Each Member shall be entitled to attend an Annual Members’ Meeting.

4 Meetings in Public

- 4.1 Annual Members’ Meetings shall be open to the public.
- 4.2 The Chair may exclude any member of the public from an Annual Members’ Meeting if he is interfering with or preventing the reasonable conduct of the meeting.
- 4.3 Annual Members’ Meetings shall be held at such times and places that the Chair may determine.

5 Notice of Meetings

At least 14 days before each Annual Members’ Meeting, 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 behalf, shall be displayed at the Trust's head office and posted on the Trust's website.

6 Setting the Agenda

The Chair shall determine the agenda for Annual Members' Meetings.

7 Chair of Annual Members' Meetings

The Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair shall preside.

8 Chair's Ruling

Statements made by any person at an Annual Members' Meeting 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.

9 Voting

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

9.2 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.

9.3 A Member may not vote at an Annual Members' Meeting unless he/she has made a declaration in the specified form that he/she is a member of a Public Constituency.

9.4 The form and content of the declaration for the purposes of paragraph 9.3 above shall be specified and published by the Trust from time to time and shall be so published not less than 28 days prior to the Annual Members' Meeting.

9.5 In no circumstances may an absent Member vote by proxy.

10 Suspension of Standing Orders

10.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at an Annual Members' Meeting, provided that a majority of members present vote in favour of suspension.

10.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.

10.3 A separate record of matters discussed during the suspension of the Standing Orders shall be made and shall be available to the Members.

10.4 No formal business may be transacted while the Standing Orders are suspended.

10.5 The Trust's Audit Committee shall review every decision to suspend the Standing Orders.

11 Variation and Amendment of Standing Orders

These Standing Orders may be amended in accordance with paragraph 46 of the Constitution.

12 Record of Attendance

The Secretary shall keep a record of the names of the Members present at an Annual Members' Meeting.

13 Minutes

13.1 The Minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it.

13.2 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.

13.3 The Minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

14 Quorum

14.1 No business shall be transacted at an Annual Members' Meeting unless at least 8 Members are present.

14.2 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 other time and place as the Chair shall determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Members present at the adjourned meeting is to be the quorum.