



**University Hospitals of
Morecambe Bay**
NHS Foundation Trust

**University Hospitals of Morecambe Bay NHS
Foundation Trust Constitution**

(A PUBLIC BENEFIT CORPORATION)

(Updated as per the Health and Care Act 2022)

**Approved by the Council of Governors on 21 May 2024
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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 Care Act 2022

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

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

1.4 All annexes and appendices referred to in this Constitution form part of it.

1.5 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated or the context otherwise so requires.

1.6 In this Constitution:

“the 2006 Act” is the National Health Service Act 2006.

“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.

“Annual Accounts” means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

“Annual Members Meeting” is defined in paragraph 12 of the constitution

“Annual Report” means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Appointed Governor" means a member of the Council of Governors appointed by an appointing organisation named in Annex 3 of this constitution;

"Area of the Trust" means the area, consisting of all the areas, specified in Annex 1 of this Constitution, as an area for a Public Constituency;

"Audit Committee" means a committee of the Board of Directors as established pursuant to paragraph 41 of this Constitution;

"Auditor" means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 40 of this Constitution;

""Provider Licence" means the licence issued to the Trust by NHS England under section 87 of the 2006 Act;

"Board of Directors" means the Board of Directors of the Trust as constituted in accordance with this Constitution;

“Budget” means a resource, expressed in financial terms, approved by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

“Call a meeting” means to give notice to when a meeting will be held

"Chair" means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chair" shall be deemed to include the Deputy Chair or any other Non-Executive Director appointed if the Chair and/or Deputy Chair is absent from the meeting or is otherwise unavailable;

"Chief Executive" means the Chief Executive of the Trust;

"Committee of the Board" means a committee appointed by the Board with specific terms of reference, chair, and membership approved by the Board.

"Committee of the Council" means a committee appointed by the Council of Governors with specific terms of reference, chair, and membership approved by the Council of Governors.

"Constitution" means this constitution and all annexes to it.

"Council of Governors" means the Council of Governors as constituted in this Constitution, which has the same meaning as the "Council of Governors" in paragraph 7 of Schedule 7 to the 2006 Act;

"Deputy Chair" means the Deputy Chair of the Trust appointed pursuant to paragraph 28 of this Constitution;

"Director" means a member of the Board of Directors;

"Directors' Code of Conduct" means the Code of Conduct for Directors of the Trust, as adopted by the Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to;

"Elected Governor" means a Public Governor, or a Staff Governor;

"Executive Director" means an executive member of the Board of Directors of the Trust;

"Financial Year" means:

- (a) a period beginning with the date on which the Trust is authorised as an NHS foundation trust and ending with the next 31 March; and
- (b) each successive period of twelve months beginning with 1 April;

"Forward Plan" means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;

"Governor" means a member of the Council of Governors;

"Governors' Code of Conduct" means the Code of Conduct for Governors of the Trust, as adopted by the Trust and as amended from time to time by the Council of Governors, which all Governors must subscribe to;

"Health Overview and Scrutiny Committee" means a local authority overview and scrutiny committee established pursuant to section 21 of the Local Government Act 2000 or any successor body established for this purpose";

"Immediate Family Member" means either:

- (a) a spouse;

- (b) a person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004;
- (c) a child, step child or adopted child; or
- (d) a parent;

"Lead Governor" means the person appointed in accordance with SO 28 of Annex 5;

"Member" means a Member of the Trust and the term "membership" shall be construed accordingly;

"Model Rules for Elections" means the election rules set out in Annex 4 of this Constitution;

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

"NHS Foundation Trust Code of Governance" means the best practice advice published by NHS England on 10 March 2010, and as may be amended, varied or replaced by the NHS England from time to time;

"Nominated Officer" means an Officer charged with the responsibility for discharging specific tasks within the SOs, the SFIs, or the Scheme of Delegation;

"Non-Executive Director" means a non-executive member of the Board of Directors of the Trust;

"Officer" means an employee of the Trust or any other person holding a paid appointment or office with the Trust;

"Partner" means in relation to another person, a member of the same household living together as a family unit

"Public Constituency" has the meaning ascribed to it in paragraph 8 of this Constitution;

"Public Governor" means a member of the Council of Governors elected by the members of one of the Public Constituencies;

"Registered Dentist" means a fully registered person within the meaning of the Dentists Act 1984 who holds a license to practice under that Act;

"Registered Medical Practitioner" means a fully registered person within the meaning of the Medical Act 1983 who holds a license to practice under that Act;

"Registered Midwife" means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

"Registered Nurse" means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

"Regulatory Framework" means the 2006 Act, the Constitution and the Provider Licence;

"Replacement Governor" has the meaning ascribed to it in SO 7.3 of Annex 5 of this Constitution;

"Scheme of Delegation" means the Trust's Reservation of Powers to the Board of Directors and Delegation of Powers;

"Secretary" means the Secretary of the Trust or any other person other than a Governor, the Chief Executive or the Finance Director of the Trust, appointed by the Trust to perform the roles and responsibilities as set out in paragraph 3 of Annex 8 of this Constitution and Appendix A of the NHS Foundation Trust Code of Governance;

"Senior Independent Director" means the independent Non-Executive Director appointed by the Board of Directors, in consultation with the Council of Governors, in accordance with paragraph 4 of Annex 8;

"Sex Offenders Order" means either:

- (a) a Sexual Offences Prevention Order made under either Section 104 or Section 105 of the Sexual Offences Act 2003; or
- (b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- (c) a Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- (d) an Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003;

"Sex Offenders Register" means the notification requirements set out in Part 2 of the Sexual Offences Act 2003, commonly known as the Sex Offenders Register;

"Staff Constituency" has the meaning ascribed to it in paragraph 9 of this Constitution;

"Staff Governor" means a member of the Council of Governors elected by the members of the Staff Constituency;

"SFIs" means the Trust's Standing Financial Instructions, which regulate the conduct of Directors and Nominated Officers in relation to all financial matters with which they are concerned and the term "SFIs" shall be construed accordingly;

"Standing Orders for the Board of Directors" means the Standing Orders set out in Annex 6 of this Constitution and the term "SO" when used in Annex 6 shall be construed accordingly;

"Standing Orders for the Council of Governors" means the Standing Orders set out in Annex 6 of this Constitution and the term "SO" when used in Annex 6 shall be construed accordingly;

"Trust" means University Hospitals of Morecambe Bay NHS Foundation Trust;

"Trust Headquarters" means Trust Headquarters, Westmorland General Hospital, Burton Road, Kendal, LA9 7RG;

"Working Day" means a day of the week not including a Saturday, Sunday or Public Holiday.

2. Name

- 2.1. The name of the foundation trust is University Hospitals of Morecambe Bay NHS Foundation Trust.
- 2.2. The University Hospitals of Morecambe Bay NHS Foundation Trust became a Public Benefit Corporation on 1 October 2010 following authorisation by NHS England pursuant to the 2006 Act.
- 2.3. The Trust's principal place of business is the Trust Headquarters.

3. Principal purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England, and more specifically the provision of goods and services to the populations of Morecambe Bay that complement and integrate with local authorities and health service commissioners in England. In pursuit of this, the Trust will collaborate with its partners.
- 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 carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 3.5 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.
- 3.6 In providing health services the Trust will maintain core values and functions that demonstrate best practice and local distinctiveness. These include the core values of addressing health inequalities, learning from patients, listening to local communities and active engagement with governors

4. Powers

- 4.1 The powers of the Trust are set out in legislation.
- 4.2 In the exercise of its powers, the Trust shall have regard to the principles of the National Health Service ("NHS")
- 4.3 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.4 Any of these powers may be delegated to a committee of directors or to an executive director.
- 4.5 In performing its NHS functions the Trust shall have regard to the NHS Constitution. For the purposes of this paragraph "NHS functions" means functions under an enactment which is a function concerned with, or connected to, the provision, commissioning or regulation of NHS services and "NHS services" means health services provided in England for the purposes of the health service as set out in legislation.

5. Other Purposes

- 5.1. The purpose of the Trust is to provide goods and services, including education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and its Provider Licence.
- 5.2. The Trust may fulfil the social care functions of any local authority as specified by an agreement made under Section 75 of the 2006 Act.
- 5.3. The Trust may also undertake activities other than those mentioned in paragraphs 5.1 to 5.2 above subject to any restrictions in the Provider Licence. These activities must be for the purpose of making additional income available in order to carry out the Trust's principal purpose better.

6. Membership and constituencies

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

- 6.1 a public constituency or
- 6.2 the staff constituency

7. Application for membership

- 7.1 Subject to paragraph 11, an individual who is eligible to become a Member of the Trust may make an application to the Trust for membership at any time by completing and signing an application in the form prescribed by the Chief Executive or their delegated Officer.
- 7.2 The Secretary shall, normally within seven (7) working days of receipt of an application for membership, and subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Trust's register of Members. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 7.3 An eligible individual shall become a Member upon entry to the Trust's register of Members.

8. Public Constituency

- 8.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 8.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 8.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.
- 8.4 An eligible individual shall become a Member upon entry to the Trust's register of Members pursuant to an application by them. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 8.5 The Secretary shall, normally within seven (7) working days of receipt of an application for membership, and subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Trust's register of Members

9. Staff Constituency

- 9.1 An individual who is employed by the Trust under a contract of employment (which for the avoidance of doubt includes full-time and part-time contracts of employment) with the Trust may become or continue as a member of the Trust provided:
- 9.1.1 They are employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 9.1.2 They have been continuously employed by the Foundation Trust and / or the predecessor organisation under a contract of employment for at least 12 months. Individuals who exercise functions for the purposes of the Foundation Trust, other than under a contract of employment with the Foundation 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. For the avoidance of doubt this does not include individuals who assist or provide services to the Foundation Trust on a voluntary basis.
- 9.2 Those individuals who are eligible for membership of the Trust by reason of the previous provision are referred to collectively as the Staff Constituency.
- 9.3 The Staff Constituency shall be divided into six 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.
- 9.4 The minimum number of members in the Staff Constituency is specified in Annex 2

10. Automatic membership by default – staff

- 10.1 An individual who is:
- 10.1.1 eligible to become a member of the Staff Constituency, and
- 10.1.2 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 they inform the Trust that they do not wish to do so.

11. Restriction on membership

- 11.1 The Secretary shall make the final decision about to which constituency and/or as to which class of a constituency an individual is eligible to be a member.
- 11.2 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.
- 11.3 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.
- 11.4 An individual must be at least 16 years old to become a member of the Trust.
- 11.5 All membership is individual and there shall be no facility for corporate membership

- 11.6 Except as provided by paragraph 23 of this Constitution, Members are not entitled to receive payments or dividends from the Trust and no Member is entitled to preferential receipt of any goods or services provided by the Trust
- 11.7 Save as provided for in this Constitution, no Member may represent themselves, in writing or verbally, as belonging to any category of membership of the Trust
- 11.7.1 in a manner which might associate the Trust with the personal opinions expressed by the Member in question that may bring the Trust into disrepute; and
- 11.7.2 save for members of the Staff Constituency and Public or Appointed Governors, no Member shall designate the Trust as their personal or professional postal address in any published work or any communication to the media
- 11.8 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 7 – Membership.

12. Annual Members' Meeting

- 12.1 The Trust shall hold an annual meeting of its members. The Annual Members' Meeting shall be open to members of the public.
- 12.2 Further provisions about the Annual Members' Meeting are set out in Annex 5.

13. Council of Governors – composition

- 13.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors who shall each have equal rights of tenure, voting and participation in the business of the Council of Governors as set out in this Constitution.
- 13.2 The composition of the Council of Governors is specified in Annex 3.
- 13.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

14. Council of Governors – election of governors

- 14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules, as may be varied from time to time.
- 14.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules available from the Company Secretary as a separate Annex. (Annex 4)
- 14.3 A subsequent variation of the Model Election Rules by 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).
- 14.4 An election, if contested, shall be by secret ballot.

- 14.5 A person may not vote at an election for or stand for election as a Public Governor unless within the specified period stated in the Model Rules for Elections they have made a declaration in the forms specified in paragraph 5 of Annex 5 of this Constitution. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular

15. Appointed Governors

15.1 Appointed Governors are appointed by the Council of Governors on the recommendation of the organisations listed in Annex 3 of the Constitution, being those organisations recognised by the Trust as being of strategic importance to achieving its purposes.

15.2 An individual recommended by an organisation listed in Annex 3 may be appointed as an Appointed Governor and must be eligible to be entered as a member in the Trust's register of members.

15.3 The role of the Appointed Governors is to ensure that the Trust has the opportunity to consider the perspective of others involved in health and wellbeing issues and/or in planning integrated health service delivery.

16. Council of Governors - tenure

16.1 An elected governor may hold office for a period of up to 3 years.

16.2 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.

16.3 An elected governor shall be eligible for re-election at the end of their term but shall not hold office for longer than six consecutive years or two consecutive terms each of three years.

16.4 An appointed governor may hold office for a period of up to 3 years.

16.5 An appointed governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of them or terminates the appointment.

16.6 An appointed governor shall be eligible for re-appointment at the end of their term but shall not hold office for longer than six consecutive years or two consecutive terms each of three years.

16.7 A governor who has completed two terms of office (the maximum) cannot be re-elected or re-appointed for a period of 1 year.

16.8 For the purposes of the tenure provisions set out in paragraphs 16.1 and 16.5 above, a "year" means a period of twelve (12) consecutive months commencing immediately on the date of authorisation and each successive period of twelve (12) months thereafter.

16.9 The appointment of Appointed Governors is subject to the veto provisions contained at paragraph 3 of Annex 3.

17. Council of Governors – disqualification and removal

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

- 17.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 17.1.2 a person in relation to whom a moratorium period under a debt relief order applies under Part 7A Insolvency Act 1986;
- 17.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it;
- 17.1.4 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 them.
- 17.1.5 on the basis of disclosures obtained through an application to the Disclosure Barring Service, a person who is not considered by the Chair to be a fit and proper person to hold the office of governor;
- 17.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 17.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

18. Council of Governors – duties of governors

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

19. Council of Governors – meetings of governors

- 19.1 The Chair of the Trust (i.e. the Chair of the Board of Directors appointed in accordance with the provisions of paragraph 27) or, in their absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 28 below), or, in their absence, one of the non-executive directors, shall preside at meetings of the Council of Governors.
- 19.2 If the Chair of the Trust presiding as Chair at any such meeting has a conflict of interest in relation to the business being discussed, the Deputy Chair or, in their absence, one of the non-executive directors, will chair that part of the meeting.
- 19.3 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.

- 19.4 Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting.
- 19.5 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.

20. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 5.

21. Council of Governors – referral to the Panel

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

21.1.1 to act in accordance with its constitution, or

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

- 21.2 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.

22. 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 they become 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.

23. Council of Governors – travel expenses

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

24. Board of Directors - composition

- 24.1. The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

- 24.2. The Board of Directors is to comprise:

24.2.1. a non-executive Chair

24.2.2. no fewer than 4 and no more than 7 other non-executive directors; and

24.2.3. no fewer than 4 and no more than 7 executive directors.

24.2.4. Non voting associate non-executive directors

- 24.3. One of the executive directors shall be the Chief Executive Officer.
- 24.4. The Chief Executive Officer shall be the Accounting Officer.
- 24.5. One of the executive directors shall be the Director of Finance.
- 24.6. One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 24.7. One of the executive directors is to be a registered nurse or a registered midwife.
- 24.8. Subject to the provisions of paragraphs 24.3 to 24.7 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number of Directors is within the range set out in paragraph 24.2 above, and that, at all times, at least half of the Board of Directors, excluding the Chair, must comprise Non-Executive Directors.
- 24.9. The Trust shall have a Secretary whose role will be to support and provide advice to the Board of Directors and to support and provide advice to the Council of Governors. Further provisions with respect to the Secretary are set out at paragraph 3 of Annex 8

25. 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.

26. Board of Directors – qualification for appointment as a non-executive director

- 26.1. A person may be appointed as a non-executive director only if –
- 26.1.1. they are a member of the Public Constituency; or
 - 26.1.2. where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university, and
 - 26.1.3. they are not disqualified by virtue of paragraph 31 below

27. Board of Directors – appointment and removal of Chair and other Non-Executive Directors/Associate Non-Executive Directors

- 27.1 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/Associate Non-Executive Directors in accordance with the provisions in Annex 5
- 27.2 Removal of the Chair or another Non-Executive Director/Associate Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 27.3 A Non-Executive Director/Associate Non-Executive Director (including the Chair) may hold office for a maximum term of up to three years.
- 27.4 A Non-Executive Director/Associate Non-Executive Director (including the Chair) may be eligible for re-appointment at the end of their term, but shall not normally hold office for longer than six consecutive years or two consecutive terms each of three years. In

accordance with the NHS Foundation Trust Code of Governance any term beyond six years for a Non-Executive Director/Associate Non-Executive Director should be subject to rigorous review, which should take into account the need for progressive refreshing of the Board of Directors. A Non-Executive Director/Associate Non-Executive Director may, in exceptional circumstances, serve for longer than six years but this must be subject to annual re-appointment by the Council of Governors.

28. Board of Directors – appointment of Deputy Chair

- 28.1 The Council of Governors, having regard to the views (if any) of the Board of Directors, at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chair.
- 28.2 Any Non-Executive Director so appointed under paragraph 27 above may at any time resign from the position of Deputy Chair by giving notice in writing to the Secretary. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy Chair in accordance with paragraph 27 above.
- 28.3 If the Chair is unable to discharge their functions as Chair of the Trust, the Deputy Chair will be the "acting Chair" of the Trust until such time as the Chair is able to discharge their functions as Chair, or a new Chair is appointed by the Council of Governors in accordance with paragraph 27 above.

29. Board of Directors - appointment of Senior Independent Director

The Board of Directors shall in consultation with the Council of Governors appoint as Senior Independent Director one of the Non-Executive Directors who is deemed by the Board of Directors to be independent by reference to the NHS Foundation Trust Code of Governance. Further provisions on the appointment and powers of the Senior Independent Director, who may, for the avoidance of doubt, be the deputy Chair, are set out in Annex 6

30. Board of Directors - appointment of Deputy Senior Independent Director

The Board of Directors shall in consultation with the Council of Governors appoint as Deputy Senior Independent Director one of the Non-Executive Directors who is deemed by the Board of Directors to be independent by reference to the NHS Foundation Trust Code of Governance.

31. Board of Directors - appointment and removal of the Chief Executive and other executive directors

- 31.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 31.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 31.3 committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other executive directors.

32. Board of Directors – disqualification

- 32.1 The following may not become or continue as a member of the Board of Directors:
- 32.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

- 32.1.2 a person in relation to whom a moratorium period under a debt relief order applies under Part 7A Insolvency Act 1986;
 - 32.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it.
 - 32.1.4 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 them.
- 32.2 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 6 (SO3.23).

33. Board of Directors – meetings

- 33.1 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 by resolution of the Board of Directors 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. (A Public Interest test will be carried out in accordance with the Code of Practice on Openness in the NHS the Department Of Health Guidance on Public Interest Disclosures. Copies of the documents are available from the Office of the Company Secretary).
- 33.2 Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting.
- 33.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

34. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 6.

35. Board of Directors – conflicts of interest of directors

- 35.1 The duties that a director of the Trust has by virtue of being a director include in particular
- 35.1.1 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.
 - 35.1.2 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.
- 35.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if –
- 35.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 35.2.2 The matter has been authorised in accordance with the constitution.

- 35.3 The duty referred to in sub-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.
- 35.4 In sub-paragraph 34.1.2, “third party” means a person other than –
- 35.4.1 The Trust, or
 - 35.4.2 A person acting on its behalf.
- 35.5 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.
- 35.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 35.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 35.8 This paragraph 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 question.
- 35.9 A director need not declare an interest –
- 35.9.1. If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 35.9.2. If, or to the extent that, the directors are already aware of it;
 - 35.9.3. If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
 - 35.9.3.1. By a meeting of the Board of Directors, or
 - 35.9.3.2. By a committee of the directors appointed for the purpose under the constitution.

36. Board of Directors – remuneration and terms of office

- 36.1. 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.
- 36.2. 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.

37. Registers

- 37.1. The Trust shall have:
- 37.1.1. a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
 - 37.1.2. a register of members of the Council of Governors;
 - 37.1.3. a register of interests of governors;

37.1.4. a register of directors; and

37.1.5. a register of interests of the directors.

37.2. The Secretary shall be responsible for compiling and maintaining the registers in paragraph 36.1 above and the registers may be kept in either paper or electronic form. Admission to and 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 practical and in any event within fourteen (14) days of receipt.

38. Admission to and removal from the registers

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

39. Registers – inspection and copies

39.1. 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.

39.2. 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 the member so requests.

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

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

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

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. Documents available for public inspection

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

40.1.1. a copy of the current constitution;

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

40.1.3. a copy of the latest annual report;

40.1.4. a copy of the latest information as to its forward planning;

40.1.5. a copy of the Foundation Trust's membership strategy;

40.1.6. a copy of the Foundation Trust's policy for the composition of the Council of Governors and of the non-executive directors.

40.1.7. Copies of Minutes of the proceedings of the Board of Directors and the Council of Governors

40.1.8. The Terms of Authorisation of the Trust and details of any enforcement notices

40.2. 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:

- 40.2.1. 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.
- 40.2.2. a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
- 40.2.3. a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
- 40.2.4. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 40.2.5. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 40.2.6. 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 (NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 40.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 40.2.8. a copy of any final report published under section 65I (administrator's final report),
- 40.2.9. 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.
- 40.2.10. a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

40.3. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

40.4. 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.

41. Auditor

41.1. The Trust shall have an auditor.

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

- 41.3. In appointing the Auditor, the Council of Governors shall have regard to the recommendations (if any) of the Audit Committee.
- 41.4. The Accounting Officer shall ensure that the Auditor carries out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any guidance or best practice advice issued by NHS England on standards, procedures and techniques to be adopted.
- 41.5. The Board of Directors may resolve that an "external consultant" be appointed to review and publish a report on any other aspect of the Trust's performance. Any such "external consultant" is to be appointed by the Board of Directors and their appointment shall be reported to the Council of Governors.

42. 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.

43. Accounts

- 43.1. The Trust must keep proper accounts and proper records in relation to the accounts.
- 43.2. NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 43.3. The accounts are to be audited by the Trust's auditor.
- 43.4. The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 43.5. The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 43.6. The Trust may additionally produce information extracted from the accounts to be used to inform members and/or engage with the communities of Morecambe Bay concerning its provision of services

44. Annual report, forward plans and non-NHS work

- 44.1. The Trust shall prepare an Annual Report and send it to NHS England.
- 44.2. The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 44.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors and shall address the achievement of the principal purpose of the Trust.
- 44.4. In preparing the document, the directors shall have regard to the views of the Council of Governors and members.
- 44.5. Each forward plan must include information about –
- 44.5.1. 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

- 44.5.2. the income it expects to receive from doing so.
- 44.6. Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 43.5.1 the Council of Governors must –
 - 44.6.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
 - 44.6.2. notify the directors of the Trust of its determination.
- 44.7. If the 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, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

45. Meeting of Council of Governors to consider annual accounts and reports

- 45.1. The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 45.1.1. the annual accounts
 - 45.1.2. any report of the auditor on them
 - 45.1.3. the annual report.
- 45.2. 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.

46. Instruments

- 46.1. The Trust shall have a seal.
- 46.2. The seal shall not be affixed except under the authority of the Board of Directors.

47. Amendment of the constitution

- 47.1. The trust may make amendments of its constitution only if –
 - 47.1.1. More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
 - 47.1.2. More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 47.2. 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.
- 47.3. 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) –
 - 47.3.1. At least one member of the Council of Governors must attend the next Annual

Members' Meeting and notify Members of the changes

47.4. Amendments by the Trust of its constitution are to be notified to NHS England. For the avoidance of doubt, NHS England'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.

48. Mergers etc. and significant transactions

48.1. 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.

48.2. 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.

48.3. Significant transactions mean those transactions which meet the following criteria:

Assets – the gross assets subject to the transaction, divided by the gross assets of the Trust - >25%; or

Income – the income attributable to:

- the assets;
 - or the contract associated with the transaction,
- divided by the income of the Trust - >25%; or

Capital – the gross capital of the company or business being acquired/divested, divided by the total capital of the Trust following completion, or the effects on the total capital of the Trust resulting from a transaction >25%;

ANNEX 1 – THE PUBLIC CONSTITUENCY

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

The electoral wards are grouped into four areas as shown below, together with the minimum membership of each area. Members in each area shall elect governors in accordance with Annex 3 to represent the Council of Governors.

Area 1 Barrow and West Cumbria	Area 2 Lancashire, North West of England and Yorkshire	Area 3 South Lakeland and Cumbria	Area 4 The Rest of England
Cumberland Council covering the areas of Allerdale and Copeland	Blackburn with Darwen	Cumberland Council covering the areas of Carlisle and Eden	Covering all areas not referenced in Area 1, Area 2 or Area 3 of this table.
Westmorland and Furness Council covering the areas of Barrow and Ulverston	Blackpool		
	Burnley	Westmorland and Furness Council covering South Lakeland and excluding Ulverston	
	Chorley		
	Craven		
	Fylde		
	Hambleton		
	Harrogate		
	Hyndburn		
	Lancaster		
	Pendle		
	Preston		
	Richmondshire		
	Ribble Valley		
	Rossendale		
	Ryedale		
	Scarborough		
	Selby		
	South Ribble		
	West Lancashire		
	Wyre		
	All other electoral areas in the North West of England and North Yorkshire not already specified		
100	100	100	100

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ANNEX 2 – THE STAFF CONSTITUENCY

Class 1	Registered medical and dental practitioners
Class 2	Registered Nurses, Midwives and Operating Department Practitioners
Class 3	Allied Health Professionals
Class 4	Estates and Ancillary
Class 5	Management and administration
Class 6	Community Services

The minimum number of members in each class of the Staff Constituency shall be one hundred.

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ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

- 1 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.
- 2 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
 - 2.1 the interests of the community served by the Foundation Trust are appropriately represented;
 - 2.2 the level of representation of the Public Constituency, the classes of the Staff Constituency and the sponsoring organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs;and to this end, the Council of Governors:
 - 2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
 - 2.4 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
 - 2.5 when appropriate shall propose amendments to this constitution.
- 3 Veto

The Chair may veto the appointment of an Appointed Governor by serving notice in writing to the relevant sponsoring organisation (as the case may be) where they believe that the appointment in question is unreasonable, irrational or otherwise inappropriate. Following the service of the notice the sponsoring organisation shall thereupon appoint an alternative individual.
- 4 The Council of Governors of the Foundation Trust is to comprise:

Elected Governors

Constituency / Class to be elected	No. to be elected
Public Constituency	
Area 1 – Barrow and West Cumbria	5
Area 2 – Lancashire and North West of England and North Yorkshire	7
Area 3 – South Lakeland and North Cumbria	5
Area 4 – Rest of England	1
Staff Constituency	
Class 1 – Registered medical practitioners and dentists	1
Class 2 – Registered nurses, midwives and operating department practitioners	2
Class 3 – Allied Health Professionals	1
Class 4 – Estates and Ancillary	1
Class 5 – Management and administration	1
Class 6 – Community Services	1
Total Elected Governors	25

The class for staff constituencies differ from those used within the Employment Services Department:-

Staff Constituency Class	Employment Services Class
Class 1 – Registered medical practitioners and dentists	Medical and Dental
Class 2 – Registered nurses, midwives and operating department practitioners	Registered Nursing and Midwifery
Class 3 – Allied Health Professionals	Additional Professional and Technical Allied Health Professionals Healthcare Scientists Additional Clinical
Class 4 – Estates and Ancillary	Estates and Ancillary
Class 5 – Management and administration	Admin and Clerical
Class 6 – Community Services	

Note: Individuals who exercise functions for the purposes of the Trust other than under a contract of employment with the Foundation 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. For the avoidance of doubt this does not include individuals who assist or provide services to the Foundation Trust on a voluntary basis.

Appointed Governors

Sponsoring Organisation	No. to be appointed
Local Authority	
Westmorland and Furness Council	1
Lancashire County Council	1
North Yorkshire County Council	1
Cumberland Council	1
Partnership Organisations	
Local Universities	
Lancaster University	1
University of Cumbria	1
Community Organisations	
Mind	1
Cancer Care, North Lancashire and South Lakeland	1
Healthwatch Cumberland	1
Healthwatch Lancashire	1
Healthwatch Westmorland and Furness	1
Lead Governor from LSCFT	1
Total Appointed Governors	12

Total membership of Council of Governors	
Elected Governors	24
Appointed Governors	12
Total	36

ANNEX 4 –THE MODEL ELECTION RULES (Department of Health)

These are available as a separate document from the Office of the Company Secretary

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ANNEX 5 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

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1 Introduction

- 1.1. The Council of Governors adopts the following SOs for the regulation of its proceedings and business and shall adhere, at all times, to these SOs and to the Governors' Code of Conduct.

2 Interpretation

- 2.1 Save as otherwise permitted by law, at any meeting of the Council of Governors, the Chair of the Trust shall be the final authority on the interpretation of the SOs (on which they should be advised by the Secretary).
- 2.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.

3 Eligibility to be on the Council of Governors

- 3.1 A person may not become or continue as a Governor of the Trust if:
 - 3.1.1 they have been expelled from the post of governor of this Trust or another NHS foundation trust within the last ten years;
 - 3.1.2 they are a person whose tenure of office as the Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interest of the health service;
 - 3.1.3 they are a Director of the Trust, Auditor of the Trust, executive director, non-executive director, Chair, chief executive officer of another NHS foundation trust or other health service body (unless they are recommended by a sponsoring organisation which is an NHS foundation trust or health service body), or a body corporate whose business involves the provision of health care services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Trust;
 - 3.1.4 they have been a Director of the Trust in the preceding five (5) years prior to the date of their nomination to stand for election as an Elected Governor, or in the case of an Appointed Governor, the date of their appointment;
 - 3.1.5 they have had their name removed from a list maintained under regulations pursuant to NHS (Performers Lists) (England) Regulations 2013, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list and, due to the reason(s) for such removal, they are considered by the Trust to be unsuitable to be a Governor;
 - 3.1.6 subject to SO 3.7 below they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
 - 3.1.7 they have refused without reasonable cause to undertake any training and development which the Trust and/or Council of Governors requires all Governors to undertake, such reasonable cause to be decided by the Council of Governors;

- 3.1.8 they are a member of a committee which has any role on behalf of a local authority or the Welsh Assembly to scrutinise and review health matters;
- 3.1.9 they are the subject of a Sex Offenders Order and /or their name is included in the Sex Offenders Register;
- 3.1.10 they are an Immediate Family Member of a Governor or Director of the Trust;
- 3.1.11 they have failed to repay (without good cause) any amount of monies properly owed to the Trust such good cause to be decided by the Council of Governors;
- 3.1.12 they have failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct;
- 3.1.13 they have refused to undergo an annual Disclosure and Barring Service check;
- 3.1.14 they have refused to complete a fit and proper persons test;
- 3.1.15 they are a person who by reference to information revealed by a Disclosure and Barring Service check is considered by the Chair to be unsuitable to become or continue as a governor on the grounds that their appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 3.1.16 they have failed to make, or has falsely made, any declaration as required by paragraph 14.5 of the Constitution;
- 3.1.17 they are a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006 or who is in an equivalent list maintained under the laws of Scotland or Northern Ireland;
- 3.1.18 they are a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 3.1.19 they have received a written warning from the Trust for verbal and/or physical abuse towards Trust staff;
- 3.1.20 the relevant sponsoring Organisation which they represent ceases to exist; or
- 3.1.21 they have acted in a manner detrimental to the interests of the Foundation Trust;
- 3.1.22 they have committed a serious breach of the Governors' Code of Conduct;
- 3.1.23 NHS England has exercised its powers to remove them as a member of the Council of Governors of the trust or has suspended them from office or has disqualified them from holding office as a governor of the trust for a specified period or has exercised any of those powers in relation to them

at any time, whether in relation to the trust or to any other NHS Foundation Trust.

- 3.1.24 the Council of Governors has passed a resolution and determined that it is not in the best interests of the Foundation Trust for them to continue as a Governor following advice from the standards committee (paragraph 4.1).
- 3.2 A person holding office as a Governor shall immediately cease to do so if:
 - 3.2.1 they resign by notice in writing to the Secretary;
 - 3.2.2 they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:
 - 3.2.1.1 the absences were due to reasonable causes (SO4.3); and
 - 3.2.1.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;
- 3.3 A Staff Governor who is suspended from duties for any reason will also be suspended from their role as governor for the duration of their suspension and may not attend meetings of the Council of Governors in their capacity as a governor. Absence from meetings of the Council of Governors during a period of suspension from duties shall not count as failure to attend for the purposes of paragraph 3.2 above;
- 3.4 Where a person has been elected or appointed to be a Governor and they become disqualified or is removed from office under paragraph 17 of the Constitution or SO 3.1 above, they shall notify the Secretary in writing of such disqualification and/or (as the case may be), removal as soon as is practicable and, in any event, within fourteen (14) days of first becoming aware of those matters which rendered them disqualified or removed.
- 3.5 If it comes to the notice of the Secretary at the time of them taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect as soon as is practicable subject to the provisions contained in paragraph 3.9 below.
- 3.6 Upon despatch of any such notification under SO 3.2 or 3.3 above, that person's tenure of office, if any, shall be terminated immediately and they shall cease to act as a Governor, and the Secretary shall cause their name to be removed from the register members of the Council of Governors.
- 3.7 Where an individual is deemed by the Secretary, in their absolute discretion, to be incapable by reason of mental disorder, illness or injury of managing and/or administering their property and/or affairs for the purposes of paragraph 17 of the Constitution or SO 1.12 above, the Secretary shall either:
 - 3.7.1 temporarily suspend the individual from office until such time as the Secretary, in their absolute discretion, considers them to be capable of managing and/or administering their property and affairs; or

- 3.7.2 where the Secretary, in their absolute discretion, considers them to be permanently incapable of managing and/or administering their property and affairs, declare that the individual is disqualified from office.
- 3.8 In considering whether an individual is incapable by reason of mental disorder, illness or injury of managing and/or administering their property and/or affairs, the Secretary shall take into account the provisions of the Mental Capacity Act 2005, or any statutory modification thereof and they shall be entitled to take appropriate professional advice from internal Trust advisors, and/or external advisors, as necessary.
- 3.9 In the event that the Governor shall dispute that they are disqualified the Governor may refer the matter to the dispute resolution procedure set out in paragraph 2 4 of Annex 8 of the Constitution within twenty-eight (28) days of the date upon which the notice was given to the Governor.

4. Special Provisions where an allegation is made against a Governor

- 4.1 The Chair following a meeting of the Standards Committee shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned so that any allegation made against a Governor on the grounds set out in paragraph 17 of the Constitution or SO 3.1 can be investigated. On completion of the investigation, the report will be referred to the Standards Committee.
- 4.2 Where any grounds within paragraph 17 of the Constitution or SO 3.1 are alleged, it shall be open to the Council of Governors to decide, by 75% majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.3 The Governor in question will be notified in writing of the allegations, detailing the specific behaviour as set out in SO 3.1 (or in the case of SO3.2 relating to non attendance) which is considered to be non-compliance or misconduct, and inviting and considering their response within a defined appropriate and reasonable timescale.
- 4.4 The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.5 The Governors, by 75% majority of those present and voting (with a majority of Public Governors), can decide whether to uphold the charge of non-compliance or misconduct.
- 4.6 Should the Governors uphold the charge in accordance with SO 4.5; the Governors can impose such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses and removal of the Governor from office.
- 4.7 Upon disqualification in accordance with SO 4.5, removal or termination of a Governor's office under this SO, the Secretary shall cause their name to be removed immediately from the register of members of the Council of Governors.
- 4.8 A Governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which they shall cease to hold office.

- 4.9 A Governor who resigns under SO 4.8 above or whose office is terminated under paragraph 17 of the Constitution or SO 3.1 shall not be eligible to stand for re-election or re-appointment (as the case may be) to the Council of Governors for a period ten (10) years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of whichever is later.
- 4.10 In the event that a Governor's seat falls vacant before the end of the term of office, the provisions as set out at SO 7 of the Constitution shall apply.

5 Council of Governors Declarations

- 5.1 The specified form of declaration referred to at paragraph 14.5 of this Constitution regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections at Annex 4 and shall state as follows:

"I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political membership and any financial interests I have in the Trust at Section 4 of this form. I understand that if any of these declarations are later found to be false I will if elected lose my seat on the Council of Governors and may also have my membership withdrawn".

- 5.2 The specified form of declaration referred to at paragraph 14.5 of this Constitution regarding the declaration to vote in elections for Public Governors will be as set out in Rule 12 of the Model Rules for Elections.

- 5.3 Appointed Governors shall be required to complete a declaration regarding their eligibility to be an Appointed Governors as follows:

"I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to be appointed as an Appointed Governor for the sponsoring organisation named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from being appointed by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political membership and any financial interests I have in the Trust at Section 4 of this form. I understand that if any of these declarations are later found to be false I will if appointed lose my seat on the Council of Governors and may also have my membership withdrawn".

6 Remuneration

- 6.1 Governors are not to receive remuneration from the Trust, provided that this shall not prevent the remuneration of Governors by their employer (including but not limited to remuneration by the Trust if a Governor is employed by the Trust) pursuant to a separate contract of employment or contract for services.

7 Vacancies

- 7.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the following provisions will apply.

- 7.2 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall decide either:
- 7.2.1 to call an election within three (3) months to fill the seat for the remainder of that term of office; or
 - 7.2.2 to invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, to fill the seat until the next scheduled election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office, or
 - 7.2.3 to leave the seat vacant until the next scheduled elections, provided that by so doing this does not cause the aggregate number of Public Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Constitution as soon as reasonably practicable
- 7.3 Where the vacancy arises amongst the Appointed Governors, the Secretary will request that the relevant sponsoring organisation recommend a Replacement Governor within thirty (30) days to hold office for the remainder of the term of office.
- 7.4 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.

8 Meetings

- 8.1 The Council of Governors is to meet at least four (4) times per year.
- 8.2 The Council of Governors shall hold the Annual Members' Meeting no later than 30th September in each Financial Year, when the Council of Governors is to receive and consider the Annual Accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the Annual Report.
- 8.3 The Secretary shall call meetings in accordance with SO 11 below.
- 8.4 No business shall be carried out at a meeting which is not quorate in accordance with SO 27.

9. Admission of the Press and Public to Meetings

- 9.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the full Council of Governors except where it resolves by special resolution that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:
- 9.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - 9.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believe are special reasons for excluding the public from the meeting in accordance with the Constitution. A Public Interest test will be carried out in accordance with the Code of Practice on Openness in the NHS the Department Of Health Guidance on Public Interest Disclosures. Copies of the documents are available from the Office of the Company Secretary.

- 9.2 Members of the public and representatives of the press are not allowed 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 Council of Governors.
- 9.3 The Chair (or any person deputising for the Chair as the case may be) may remove or exclude any individual member of the public or representative of the press from a meeting of the Council if that individual is interfering in or preventing the reasonable and orderly conduct of the meeting.

10 Annual Member's Meeting

- 10.1 In accordance with paragraph 12 of the Constitution and SO 8.2 the Council of Governors shall hold an Annual Members' Meeting of the Council of Governors in every Financial Year and shall present to that meeting:
- 10.1.1 a report on the proceedings of its meetings held since the last Annual Members' Meeting;
 - 10.1.2 a report on the progress since the last Annual Members' Meeting in developing the membership strategy including the steps taken to ensure that the actual membership of the Public Constituency is fully representative of the persons who are eligible to be Members under the Constitution;
 - 10.1.3 a report on any change to the Governors which has taken place since the last Annual Members' Meeting; and
 - 10.1.4 a report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.

11 Calling Meetings

- 11.1 The Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least ten (10) Governors and specifying the business to be transacted at the meeting, has been presented to them or if, without so refusing, the Chair does not call a meeting within five (5) Working Days after such requisition has been presented to them at the Trust's Headquarters, ten (10) or more of the Governors may forthwith call a meeting for the purpose of conducting that business.
- 11.2 The Council of Governors may invite the Chief Executive, members of the Board of Directors or a representative of the Auditor or other advisors to attend any meeting of the Council of Governors.

12 Meetings and Electronic Communication

- 12.1 In this SO "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 12.2 The Council of Governors may agree that its members can participate in its meetings by telephone, video or video media link. Participation in a meeting in this

manner, including the ability to communicate interactively and simultaneously with all other attendees of the meeting, shall be deemed to constitute presence in person at the meeting.

- 12.3 A meeting at which one or more of the Governors attends by way of electronic communication is deemed to be held at such a place as the Governors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Governors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
- 12.4 Meetings held in accordance with this SO are subject to SO 27. For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.
- 12.5 The minutes of a meeting held in this way MUST state that it was held by electronic communication and that the Governors were all able to hear each other and were present throughout the meeting.

13 Notice of meetings and agenda

- 13.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on their behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor or sent electronically, so as to be available to them at least ten (10) Working Days before the meeting, save in the case of emergencies.
- 13.2 Notwithstanding the above requirement for notice, the Chair may waive notice on written receipt of the agreement of at least 50% of Governors.
- 13.3 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if possible the public part of the agenda, shall be displayed at the Trust's Headquarters and shall be advertised on the Trust's website at least ten (10) Working Days before the meeting, save in the case of emergencies.
- 13.4 Want of service of the notice of meeting on any one (1) Governor shall not affect the validity of a meeting, but failure to serve such a notice on more than three (3) Governors will invalidate the meeting. A notice shall be presumed to have been served one (1) day after posting or, in the case of a notice sent electronically, on the date of transmission.
- 13.5 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the requisition.
- 13.6 Agendas will be sent to Governors before the meeting no later than five (5) Working Days before the meeting, save in the case of emergencies, and supporting papers, whenever possible, shall accompany the agenda, but will be despatched no later than three (3) Working Days prior to the meeting, save in the case of emergencies. It is the responsibility of the Chair to ensure that sufficient information is provided to Governors to ensure that rational discussion can take place.

- 13.7 In the event of an emergency giving rise to the need for an immediate meeting failure to comply with the notice periods referred to in SO 13 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

14 Setting the Agenda

- 14.1 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 ("Standing Items").
- 14.2 A member of the Council of Governors desiring a matter other than a Standing Item to be included on an agenda, including a formal motion for discussion and voting on at a meeting, shall make their request in writing to the Chair at least ten (10) Working Days before the meeting. Any such requests via electronic communications in accordance with SO 12.1 is acceptable. A request for a formal motion must be signed or transmitted by at least two (2) Governors. 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 ten (10) Working Days before a meeting may be included on the agenda at the discretion of the Chair.
- 14.3 All such requests received by the Chair will be acknowledged by the Secretary in writing to the Governors who have signed or transmitted the same.

15 Written Motions

- 15.1 In urgent situations and with the consent of the Chair, business may be affected by a Governor's written motion to deal with business otherwise required to be conducted at a meeting of the Council of Governors.
- 15.2 If all members of the Council of Governors have been notified of the proposal and a majority of Governors entitled to attend and vote at a meeting of the Council of Governors confirms acceptance of the written motion either in writing or electronically to the Secretary within five (5) Working Days of dispatch then the motion will be deemed to have been resolved, notwithstanding that the Governors have not gathered in one place.
- 15.3 The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date, a Governor who has previously indicated acceptance can withdraw.
- 15.4 Once the resolution has been passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.

16 Petitions

- 16.1 Where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next Council of Governors meeting.

17 Motions

- 17.1 Where a Governor has requested inclusion of a matter on the agenda in accordance with SO 14.2 above as a matter to be formally proposed for discussion

and voting on at the meeting, the provisions of this SO 17 shall apply in respect of the motion.

- 17.2 The agenda papers for every meeting of the Council of Governors will set out the full text of all motions of which notice has been duly given. The motions will be listed in the papers according to the order in which they have been received.
- 17.3 No notice of motion which, in the opinion of the Chair, deals with the same or a similar matter to one which had come before Council during the previous 6 months, shall be included on the Council agenda.
- 17.4 Subject to SO 17.6 below, the mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto, or to raise a point of order.
- 17.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move (without prior notice having been given):
 - 17.5.1. that the motion be withdrawn;
 - 17.5.2. an amendment to the motion;
 - 17.5.3. the adjournment of the discussion or the meeting;
 - 17.5.4. that the meeting proceed to the next item of business;
 - 17.5.5. the appointment of an ad hoc committee to deal with a specific item of business;
 - 17.5.6. that the motion be now put;
 - 17.5.7. that the public be excluded from the meeting in relation to the discussion concerning the motion under SO 9.1
- 17.6 In the case of SOs 17.5.4 and 17.5.6 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 17.7 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
- 17.8 The Chair shall have absolute discretion to the time permitted to members of the Council of Governors to move a motion or respond or reply to the motion.
- 17.9 For the avoidance of doubt, the following motions may be moved at a meeting of the Council of Governors without notice pursuant to SO 13.2 above:
 - 17.9.1. a motion in relation to the accuracy of the minutes of the previous meeting of the Council of Governors;
 - 17.9.2. a motion to change the order of business in the agenda for that meeting;
 - 17.9.3. a motion to refer a matter discussed at a meeting to an appropriate body or individual;

- 17.9.4. a motion to appoint an ad hoc committee or a working group to deal with a specific item of business;
- 17.9.5. a motion to receive reports or adopt recommendations made by the Board of Directors;
- 17.9.6. a motion to withdraw a motion;
- 17.9.7. a motion to amend a motion;
- 17.9.8. a motion to proceed to the next item of business on the agenda;
- 17.9.9. a motion that the question be now put;
- 17.9.10. a motion to adjourn a debate;
- 17.9.11. a motion to adjourn a meeting;
- 17.9.12. a motion to suspend a particular SO (subject to SO 25 below);
- 17.9.13. a motion to exclude the public and press from the meeting in question pursuant to SO 9.1 above;
- 17.9.14. a motion to not hear further from a Governor, or to exclude them from the meeting in question (if a Governor persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in their absolute discretion, may move that the Governor in question be not heard further at the meeting in question. 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 in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion); and
- 17.9.15. a motion to give the consent of the Council of Governors to any matter where its consent is required pursuant to the Constitution.

Withdrawal of Motion which is before the Council

17.10 A Notice of Motion will be regarded as withdrawn if :

- 17.10.1. prior to the Council meeting, an indication to this effect is given in writing to the Board Secretary by the Member who submitted the Notice; or
- 17.10.2. at the Council meeting, oral notice to this effect is given by the Member who submitted the Notice; or
- 17.10.3. the Notice of Motion is not moved and seconded at the meeting of Council.

Procedure at the Meeting

- 17.11 When a Motion has been moved and seconded it shall stand referred without discussion to such of those Sub Groups or other bodies as the Chair may determine, for determination. However, if the Chair considers it conducive to the despatch of business, the motion may be dealt with at the meeting of the Council of Governors at which it is moved and seconded.

Procedure after the Meeting

- 17.12 Each motion will then be referred to the relevant Sub Groups or other body for determination, without the need for any reference back to Council except where arising from consideration of the motion there is some legal or Constitutional requirement for the matter to be referred back to Council.

18 Chair

- 18.1 The Chair or Deputy Chair of the Trust will preside over meetings of the Council, such persons being appointed and removed by the Governors in accordance with the provisions of paragraphs 27 and 28 of the Constitution.
- 18.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair shall preside.
- 18.3 Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair
- 18.4 If the Deputy Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director as shall be appointed by the Council of Governors shall preside.

19 Report from the Board of Directors

- 19.1 Unless otherwise agreed in writing between the Council of Governors and the Board of Directors, at each meeting of the Council of Governors, the Board of Directors through the Chair or an Executive Director (or Nominated Officer) is required to report to the Council of Governors on the Trust's general progress forward and forward planning.
- 19.2 At any meeting a Governor may ask any question through the Chair without notice on any report made pursuant to SO 19.1 above after that report has been received by or while such report is under consideration by the Council of Governors at the meeting. Unless the Chair decides otherwise no statements will be made other than those which are strictly necessary to define any question posed and in any event the Chair will have absolute discretion to the time permitted to make such a statement. A Governor who has put such a question may also put one supplementary question if the supplementary question arises directly out of the reply given to the initial question. The Chair may, in their absolute discretion, reject any question from any Governor if in their opinion the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting.
- 19.3 At the absolute discretion of the Chair questions may, at any meeting which is held in public, be asked of the Executive Directors present by Members of the Trust or any other members of the public present at the meeting.

20 Chair's Ruling

- 20.1 Subject to SO 20.2 below, statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time, and subject to SO 2.1, the decision of the Chair on questions of order, relevancy, regularity and any other matters shall be final.
- 20.2 This SO applies to all forms of speech/debate by Governors in relation to motions or questions under discussion at a meeting of the Council of Governors.
- 20.3 Any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. The Chair shall have absolute discretion as to the length of time permitted to members of the Council of Governors give a speech. Furthermore in the interests of time the Chair may, in their absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.
- 20.4 All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

21 Voting

- 21.1 An Elected Governor may not vote at a meeting of the Council of Governors unless, within seven (7) Working Days prior to the commencement of the meeting they have made a declaration, in the form specified within Schedule A to this Annex, that they are a member of the constituency which elected them and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.
- 21.2 An Appointed Governor may not vote at a meeting of the Council of Governors unless within seven (7) Working Days prior to the commencement of the meeting they have made a declaration, in the form specified within Schedule A to this Annex, that they are a properly appointed Governor and is not prevented from being a member of the Council of Governors.
- 21.3 A Governor shall be deemed to have confirmed the declarations, made either under SO 21.1 and SO 21.2 above, on attending a subsequent meeting of the Council of Governors, unless they otherwise notifies the Secretary in writing.
- 21.4 Subject to SO 21.5 below or any provision of the Constitution stating otherwise, every question to be determined by a vote of the Governors at a meeting shall be determined by a simple majority of the votes of the Chair of the meeting and the Governors present and voting on the question.
- 21.5 Whoever is Chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a casting vote.
- 21.6 A resolution for the removal of the Chair or a Non-Executive Director shall be passed only if three-quarters of the members of the Council of Governors vote in favour of it.
- 21.7 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 paper ballot may also be used if a majority of the Governors present so request.

- 21.8 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.
- 21.9 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 21.10A Governor may only vote if present at the time of the vote on which the question is to be decided. No Governor may vote by proxy but a Governor present by way of electronic communication as set out in SO 12.1 is considered to have been present at the meeting and so is therefore entitled to vote.
- 21.11In certain circumstances which must be approved in advance by the Council of Governors, the Chair may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three-quarters of the Governors, and a majority of Governors who are Elected Governors of the Trust, approve the resolution in writing within the timescale imposed in such a notice.
- 21.12All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a committee shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.

22 Minutes

- 22.1 The minutes of the proceedings of a meeting of the Council of Governors shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 22.2 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.
- 22.3 Minutes shall be circulated in accordance with the Governors' wishes.
- 22.4 The approved minutes of the meeting shall be made available to the public and will be published on the Trust website within one week of the meeting at which they have been approved except for minutes relating to business conducted when members of the public are excluded under the terms of SO 9 of these Standing Orders.

23 Committees, Sub Committees and Joint Committees

- 23.1 Subject to such guidance or best practice advice as may be issued by NHS England, the Council of Governors may and, if directed by NHS England shall, appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Regulatory Framework, consisting wholly or partly of the Chair, Governors and others.
- 23.2 A committee appointed under this SO 23.1 may, subject to guidance and best practice advice as may be issued by NHS England or the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee but may not delegate their powers to that sub-committee unless expressly authorised by the Council of Governors.

23.3 The committees established by the Council of Governors are:

23.3.1 Auditors Appointment Committee;

23.3.2 Nominations & Remuneration Committee;

23.3.3 such other Committees as deemed necessary by the Council of Governors from time to time.

23.4 The Council of Governors may appoint Governors to serve on joint committees with the Board of Directors on the request of the Chair.

23.5 These committees, sub-committees or joint committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with paragraph 5 of Annex 8 (Dispute Resolution Procedure).

23.6 These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chair" to be read as a reference to the Chair of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.

23.7 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance or best practice advice issued by NHS England, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting.

23.8 The Council shall approve the membership to all committees/sub committees that it has formally constituted and shall determine the Chair of each committee/subcommittee. Each appointment shall be for a specified term of office to enable regular refreshing of the committees. A governor may be a member of more than one committee but may not chair more than one committee.

23.9 An attendance register shall be kept for each committee and failure to attend three consecutive meetings of the committee may lead to the removal of the governor from that committee at the discretion of the Council of Governors.

23.10 Where the Council of Governors is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance or best practice advice issued by NHS England.

23.11 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors or NHS England.

23.12A Governor or a non-governor in attendance at a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.

23.13A Governor or a non-governor in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council or committee resolves that it is confidential.

24 Appointment and Removal of Chair and other Non-Executive Directors

24.1 Non-Executive Directors are to be appointed by the Council of Governors using the following procedure.

24.1.1. The Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.

24.1.2. The Board of Directors will undertake an internal review, to identify the skills and experience required for non-executive Directors.

24.1.3. Appropriate candidates will be identified by the Governors' Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.

24.1.4. The Nominations Committee will comprise the Chair of the Foundation Trust (or, when a Chair is being appointed, the Deputy Chair unless they are standing for appointment, in which case another non-executive director), the Senior Independent Director and a minimum of 6, maximum of 10 Governors, the majority of which are elected governors. The Chair of another Foundation Trust (or other suitably qualified persons) will be invited to act as an independent assessor to the Nominations Committee in relation to the appointment or reappointment of the Chair.

24.2 The removal of the Chair or another non-executive Director shall be in accordance with the following procedures.

24.2.1 Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors.

24.2.2 Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.

24.2.3 In making any decision to remove a non-executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chair.

24.2.4 If any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put

forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

25 Suspension of Standing Orders

- 25.1 Except where this would contravene any provision of the Regulatory Framework or any statutory provision or any guidance or best practice advice made by NHS England, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the Public Constituency of the Trust, and that a majority of those present vote in favour of suspension.
- 25.2 A decision to suspend the SOs shall be recorded in the minutes of the meeting and shall only be suspended for the duration of the meeting in question.
- 25.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Chair and Governors.
- 25.4 No formal business may be transacted while the SOs are suspended.
- 25.5 The Trust's Audit Committee shall review every decision to suspend the Standing Orders.

26 Record of Attendance

- 26.1 The names of the Chair and Governors present at the meeting shall be recorded in the minutes.

27 Quorum

- 27.1 No business shall be transacted at a meeting unless at least one-third of the total number of Governors is present.
- 27.2 If at any meeting there is no quorum present within thirty (30) minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a minimum of five (5) Working Days to a maximum of twenty (20) Working Days (and the Secretary shall give or shall procure the giving of notice to all Governors of the date, time and place of the adjourned meeting) and upon reconvening, those present shall constitute a quorum.
- 27.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in SO 7 they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

28 Lead Governor

- 28.1 The Council of Governors shall appoint a Lead Governor and Deputy Lead Governor at a meeting of the Council of Governors or Annual Members' Meeting as the case may be in accordance with SO 28.8 below.
- 28.2 The Lead Governor shall lead the Council of Governors where it is not appropriate for the Chair, Deputy Chair or other Non-Executive Director to do so.

- 28.3 The Deputy Lead Governor shall support the work of the Lead Governor and if the Lead Governor is unable to discharge their functions as Lead Governor of the Trust, the Deputy Lead Governor will be the "acting Lead Governor" of the Trust until such time as the Lead Governor is able to discharge their functions as Lead Governor, or a new Lead Governor is appointed by the Council of Governors in accordance with SO 28.1 above.
- 28.4 Without prejudice to the rights of any Governor to communicate directly with the Chair, the Lead Governor shall be responsible for receiving from Governors and communicating to the Chair any comments, observations and concerns expressed to them by Governors other than at meetings of the Council of Governors regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business.
- 28.5 This appointment shall be made from all Governors; both elected and appointed who form part of the Council of Governors.
- 28.6 The Lead Governor and Deputy Governor so appointed shall hold office for two years or until the expiry of their term of office as a Governor.
- 28.7 Requests for nominations for appointment as the Lead Governor or Deputy Lead Governor shall be sent out to all governors. Any nominations shall be made in writing by the Governor seeking appointment specifying the role for which they wish to be nominated and the reasons why must be returned to the Office of the Company Secretary.
- 28.8 In the event of there being two (2) or more nominations for either appointment, a secret ballot shall be held of all the Governors with each Governor having one vote for each contested appointment.
- 28.9 The Governor whose nomination receives the largest number of votes for the position shall be appointed.
- 28.10 In the event of an equality of votes the appointment shall be determined by the drawing of lots.
- 28.11 The result of the ballot shall be announced via email.
- 28.12 Any individual appointed under this standing order may at any time resign as Lead Governor or Deputy Lead Governor by giving notice in writing to the Secretary. The Council of Governors shall thereupon appoint another Lead Governor or Deputy Lead Governor at either the next meeting of the Council of Governors or electronically, whichever would result in the quickest appointment.

29 Declarations of Interests

- 29.1 The Regulatory Framework requires each Governor to declare to the Secretary:
- 29.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, and
 - 29.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in SOs 30.2 and 30.3; and

- 29.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 30.5.
- 29.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within seven (7) Working Days of becoming aware of the existence of that interest, and in a form prescribed by the Secretary as attached at Schedule B of this Annex.
- 29.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 29.4 Subject to SO 29.3, if a Governor has declared a pecuniary interest (as described in SOs 30.2 and 30.3) they shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 29.5 This standing order applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not they are also a Governor).
- 29.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS or Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

30 Nature of Interests

- 30.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with any guidance and best practice advice issued by NHS England:
- 30.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
- 30.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Trust; or
- 30.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Trust; or
- 30.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 30.1.5 any connection with a voluntary or other organisation contracting for NHS or Trust services or commissioning NHS or Trust services; or
- 30.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 30.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- 30.2.1 they, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 30.2.2 they are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 30.3 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 30.3.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
 - 30.3.2 of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
 - 30.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 30.4 Where a Governor:
- 30.4.1 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
 - 30.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
 - 30.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest.
- 30.5 A family Interest is an interest of an Immediate Family Member of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of theirs.
- 30.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. 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.

31 Register of Members of the Council of Governors

- 31.1 The Register of members of the Council of Governors shall list the names of Governors and their category of membership of the Council of Governors.

- 31.2 The Secretary shall keep a register of interests of members of the Council of Governors which shall contain the names of each Governor, whether they have declared any interest, and if so, the interest declared.
- 31.3 The register of governors' interests will be available to the public and the Chair will take reasonable steps to bring the existence of the register of interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the register of interests must be provided to members of the trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non- members for copies or extracts of the register of interests.
- 31.4 In establishing, maintaining, updating and publicising the register of interests, the trust shall comply with all guidance issued from time to time by NHS England. The details of governors' interests recorded in the register of interests will be kept up to date by means of a regular review as necessary by the Chair or Secretary during which any changes of interests recently declared will be incorporated.

32 Standards of Business Conduct

- 32.1 Members of the Council of Governors shall comply with the Governors' Code of Conduct and any guidance or best practice advice issued by NHS England.

33 Appointments and Recommendations

- 33.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, save that this standing order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 33.2 Informal discussions outside nominations panels, appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.
- 33.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or Officer of the Trust. Failure to disclose such a relationship shall disqualify a candidate and may, if appointed, render them liable to instant dismissal subject to Trust policy.
- 33.4 The Chair and every Governor shall disclose to the Chief Executive or their delegated Officer any relationship between themselves and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or their delegated Officer to report to the Council of Governors any such disclosure made.
- 33.5 On appointment, members of the Council of Governors should disclose to the Council of Governors whether they are related to any other member of the Council of Governors or holder of any office in the Trust.
- 33.6 Where the relationship to a member of the Council of Governors of the Trust is disclosed, SO 28 shall apply.

34 Review, Variation and amendment of Standing Orders

- 34.1 These Standing Orders, including all documents having effect as if incorporated in them, shall be subject to regular review by the Council of Governors at intervals not exceeding every three years.
- 34.2 As prescribed by the Constitution, amendment by the Trust of its Constitution, including these Standing Orders, are only to be made in accordance with paragraph 46 of the Constitution.
- 34.3 Without prejudice to the terms of this Constitution, these Standing Orders shall be amended only if:
- 34.3.1 notice of motion has been given;
 - 34.3.2 no fewer than half the total of the Governors vote in favour of amendment;
 - 34.3.3 at least two-thirds of the Governors are present; and
 - 34.3.4 the variation proposed does not contravene a statutory provision.

35 Council Performance

- 35.1 The Lead Governor, supported by the Chair and Company Secretary shall, at least annually, lead a performance assessment process for the Council to enable the Council to review its roles, structure, composition and procedures taking into account emerging best practice.
- 35.2 The validity of any act of the Council is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

36 Indemnity

- 36.1 Members of the Council of Governors and the Secretary 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 functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and the Secretary.

37 Miscellaneous

- 37.1 The Secretary shall provide a copy of these SOs to each Governor and endeavour to ensure that each Governor understands their responsibilities within these SOs.
- 37.2 If for any reason these SOs 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 of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these SOs to the Chair as soon as possible.

38 Council of Governors Urgent Decisions

- 38.1 If an urgent decision is required and there is not a planned meeting of the Council of Governors due to take place there are two possible ways in which the Chair can proceed:

- 38.1.1 Firstly, an emergency meeting of the Council of Governors can be called or;
- 38.1.2 Secondly, the Chair, after consultation with the Lead and Deputy Lead Governor, is authorised to make urgent decisions and these decisions are reported to the next Council of Governors meeting.

Schedule A

Form of Declaration to the Secretary of University Hospitals of Morecambe Bay NHS Foundation Trust

Part A – Form of Declaration for Elected Governors

Date *[insert]*

To the Secretary of University Hospitals of Morecambe Bay NHS Foundation Trust

Dear *[insert]*

In fulfilment of the obligations imposed on me by the provisions of SO 5 of the Standing Orders for the Practice and Procedure of the Council of Governors, I hereby declare that I am at the date of this declaration a member of the **[Public / Staff]** Constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.

Yours faithfully

[name]

Part B – Form of Declaration for Appointed Governors

Date *[insert]*

To the Secretary of University Hospitals of Morecambe Bay NHS Foundation Trust

Dear *[insert]*

In fulfilment of the obligations imposed on me by the provisions of SO 5 of the Standing Orders for the Practice and Procedure of the Council of Governors, I hereby declare that I am at the date of this declaration a properly appointed Governor and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.

Yours faithfully

[name]

Schedule B

Prescribed Form of Declaration of Interests

Form of Declaration to the Secretary of University Hospitals of Morecambe Bay NHS Foundation Trust

Date *[insert]*

To the Secretary of University Hospitals of Morecambe Bay NHS Foundation Trust

Dear *[insert]*

In fulfilment of the obligations imposed on me by paragraph 22 of the Constitution of the Trust and the provisions of SO 5 of the Standing Orders for the Practice and Procedure of the Council of Governors, and in particular SO 29.2, I hereby give notice to the Trust of my interest in *[insert details of the nature and extent of the relevant interest(s) (e.g. pecuniary, non pecuniary, direct, indirect, actual, potential, etc.)]* as of the date posted above.

I require the nature and extent of my interest(s) to be recorded in the Trust's register of interests of the members of the Council of Governors.

Yours faithfully

[name]

ANNEX 6 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

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1 Introduction

- 1.1 The Trust is governed by the Regulatory Framework. The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Board of Directors to adopt SOs for the regulation of its proceedings and business and to adhere at all times to the Trust's Code of Conduct.
- 1.2 As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable as well as to NHS England. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients. All funds received in trust shall be in the name of the Trust as corporate trustee. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees.
- 1.3 The SOs, Scheme of Delegation and SFIs provide a comprehensive business framework for the administration of the Trust's affairs, and these need to be read in conjunction with the Regulatory Framework. All Executive Directors and Non-Executive Directors, and Nominated Officers, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions contained within them. The Board shall at all times seek to comply with the NHS Foundation Trust Code of Governance.
- 1.4 The Trust will deal with NHS England in an open and co-operative manner and must promptly notify NHS England of anything relating to the Trust which NHS England would reasonably expect prompt notice of, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under its Provider Licence or any financial or performance thresholds which NHS England may specify from time to time.
- 1.5 The Chair, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee) and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service. They will also ensure that they follow The NHS Foundation Trust Code of Governance 2010 published by NHS England that sets out the overarching framework for compliance with the Regulatory Framework.

2 Interpretation

- 2.1. Save as otherwise permitted by law, at any meeting of the Board of Directors, the Chair of the Trust shall be the final authority on the interpretation of the SOs (on which they should be advised by the Secretary).
- 2.2. Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.

3 The Board

- 3.1. All business shall be conducted in the name of the Trust.
- 3.2. The composition of the Board shall be as set out in paragraph 24 of the Constitution.

- 3.3. The Board shall approve a formal declaration process to enable it to assess the independent status or otherwise of each non-executive Director. The process shall apply to all proposed new appointees and annually to those already appointed. The Chief Executive and Chair of the Audit Committee shall review the declarations and shall report the outcome to the Board. The declaration of the Chair of the Audit Committee, themselves a non-executive Director under the terms of this Constitution, shall be reviewed and the outcome reported to the Board by the Trust Chair and the Chief Executive. The Board shall then determine the status of each non-executive Director.
- 3.4. The Board (in consultation with the Council) may appoint any non-executive Director who is deemed to be independent to be the Senior Independent Director, for such period, not exceeding the remainder of their term as a Director, as they may specify on appointing them.
- 3.5. The Senior Independent Director may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair.
- 3.6. The Senior Independent Director shall perform the role set out in the Trust's Senior Independent Director job description, as may be amended from time to time by resolution by the Board, which shall include acting as a conduit for concerns to be raised by Governors and/or members if the usual mechanisms of contact and discussion have been exhausted or are inappropriate.
- 3.7. The Chair and non-executive Directors are appointed / removed by the Council in accordance with paragraph 27 of the Constitution.
- 3.8. In accordance with paragraph 30 of the Constitution the non-executive Directors shall appoint the Chief Executive (which appointment shall be approved by the Council) and a committee consisting of the Chair, Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors.
- 3.9. The term of office of each of the Directors shall be determined in accordance with paragraph 35 of the Constitution.
- 3.10. For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council shall, in accordance with paragraph 28 of the Constitution, appoint one of the non-executive Directors to be deputy Chair.
- 3.11. The deputy Chair may at any time resign from the office of deputy Chair by giving notice in writing to the Chair
- 3.12. Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform their duties, be taken to include references to the deputy Chair (if any) or otherwise to a non-executive Director appointed by the Board to preside for the time being over its meetings.
- 3.13. Where more than one person is appointed jointly to a post then those persons may, with the approval of the Board, be appointed as an executive Director jointly, and shall count as one person.
- 3.14. The Board shall appoint a Trust Secretary who, under the direction of the Chair, shall ensure good information flows within the Board and Council and their Committees, between Directors and Governors, and between senior management

and non-executive Directors. The Trust Secretary shall also advise the Board and Council on all governance matters and shall facilitate induction and professional development as required for both the Board and the Council. In the absence of the Company Secretary, the Deputy Company Secretary will be responsible. The Office of the Company Secretary will have the requisite resources to fulfil the requirements of the Constitution.

- 3.15. The Board's Nominations & Remuneration Committee shall meet to appraise the performance of the Executive Directors, at least annually, and on such other occasions as are deemed by the Board to be appropriate, with or without the Chief Executive present, and led by the Chair. The Committee shall prepare a written appraisal and circulate it in confidence to all non-executive Directors including the Chair. If appropriate, and with the approval of the majority of the non-executive Directors, the Chair shall make recommendations to the Chief Executive of the Committee's report.
- 3.16. The Board shall approve a formal Letter of Understanding between the Chair and Chief Executive setting out, as clearly as possible, a division of their responsibilities. The Letter shall be reviewed and modified as the Board shall, from time to time, decide.
- 3.17. A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their function as a Director save where they have acted recklessly. On behalf of the Directors and as part of the Trust's overall insurance arrangements, the Board shall put in place appropriate insurance provision to cover such indemnity.
- 3.18. Non-executive Directors may, at the Trust's expense, seek external advice or appoint an external adviser on any material matter of concern provided the decision to do so is a collective one by the majority of non-executive Directors.

3.19. Joint Directors

- 3.19.1. Where more than one person is appointed jointly to a post mentioned in paragraph 30 of the Constitution those persons shall count as one person.
- 3.19.2. Where the post is shared jointly by more than one person:
 - 3.19.2.1. either or both of those persons may attend or take part in meetings of the Board;
 - 3.19.2.2. if both are present at a meeting they should cast one vote if they agree;
 - 3.19.2.3. in the case of disagreements no vote should be cast;
 - 3.19.2.4. the presence of either or both of those persons should count as the presence of one person for the purposes of SO 5.7.

3.20. Director

- 3.20.1. Where more than one person is appointed jointly to a post mentioned in paragraph 30 of the Constitution those persons shall count as one person.
- 3.20.2. Where the post is shared jointly by more than one person:

- 3.20.2.1. either or both of those persons may attend or take part in meetings of the Board;
- 3.20.2.2. if both are present at a meeting they should cast one vote if they agree;
- 3.20.2.3. in the case of disagreements no vote should be cast;
- 3.20.2.4. the presence of either or both of those persons should count as the presence of one person for the purposes of SO 5.7.

3.21. Absent Executive Directors

If:

- 3.21.1. an executive director is temporarily unable to perform their duties due to illness or some other reason (the "Absent Director"); and
- 3.21.2. the board of directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement director; and
- 3.21.3. the board of directors agree that the duties of the Absent Director need to be carried out; then the Chair (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting director as an additional director to carry out the Absent Director's duties temporarily.
- 3.21.4. The acting director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint them under this paragraph notifies them that they are no longer to act as an acting director.
- 3.21.5. The acting director shall be an Executive Director for the purposes of the 2006 Act. They shall be responsible for their own acts and defaults and they shall not be deemed to be the agent of the Absent Director.

3.22. Vacant Executive Director Positions

If:

- 3.22.1. an executive director post is vacant ("Vacant Position"); and
- 3.22.2. the board of directors agree that the Vacant Position needs to be filled by an interim post holder pending appointment of a permanent post holder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a director as an interim director ("Interim Director") to fill the Vacant Position pending appointment of a permanent potholder.
- 3.22.3. The Interim Director will vacate office on the appointment of a permanent post holder or, if earlier, the date on which the persons entitled to appoint them under this paragraph notifies them that they are no longer to act as an Interim Director.
- 3.22.4. The Interim Director shall be an Executive Director for the purposes of the 2006 Act.

3.23. Further Provisions As To Disqualification Of Directors

3.23.1 In addition to paragraph 31 of the Constitution a person may not become or continue as a Director of the Foundation Trust if:

- 3.23.1.1 they are a member of the Council of Governors or a governor or director of an NHS body;
- 3.23.1.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- 3.23.1.3 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 3.23.1.4 they are a person whose tenure of office as a Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 3.23.1.5 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
- 3.23.1.6 in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
- 3.23.1.7 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

3.24. Appointment and Removal of Chief Executive Officer and Other-Executive Directors

3.24.1 Executive Directors are to be appointed or removed by the Board of Directors using the following procedure.

- 3.24.1.1 The Board of Directors will maintain a policy for the composition of the Board which takes account of succession planning and trust strategy, which they shall review from time to time and not less than every three years.
- 3.24.1.2 The Board of Directors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for Executive Directors.
- 3.24.1.3 Appropriate candidates for appointments will be identified by the Board's Remuneration Committee through a process of open competition, which take account of the policy maintained by the Board of Directors and the skills and experience required.
- 3.24.1.4 The Board's Remunerations Committee will comprise the Chair of the Foundation Trust, all Non-Executive Directors and the

Chief Executive (except when discussing matters relating to the Chief Executive).

- 3.24.1.5 The Board's Remunerations Committee will also make recommendations to the Board in regard to release dates following the resignation/removal of an Executive Director from office, where these are earlier than completion of the contractual notice period, having regard to a full risk assessment of the circumstances and taking into account appropriate advice and any requirements to seek Treasury approval and will make recommendations to the Board in regard to contractual arrangements for Executive Directors, including but not limited to termination payments.

4 Delegation of Powers – Scheme of Delegation

- 4.1. Under SO 6 (Arrangements for the exercise of functions by delegation) the Board of Directors exercises its power to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee of the Board of Directors appointed by virtue of SO 7 or by an Executive Director of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated powers are covered in the Scheme of Delegation.

5 Meetings of the Trust

5.1. Admission of the public and the press

- 5.1.1. Meetings of the Board of Directors shall be held in public and members of the general public and representatives of the press shall be afforded facilities to attend, unless decided otherwise by the Chair or Board of Directors in accordance with paragraph 32 of the Constitution and the provisions contained within this standing order.

- 5.1.2. Where a meeting of the Board of Directors is held in public, the public and representatives of the press shall be afforded facilities to attend such meeting of the Board of Directors but shall be required to withdraw 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 of which would be prejudicial to the public interest"

- 5.1.3. The Chair shall give such directions as they think fit (including a decision to expel or exclude any member of the public and/or press if the individual in question is interfering with or preventing the proper conduct of the meeting) in regard to the arrangements for meetings of the Board of Directors and (where relevant) 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 or disruption.

- 5.1.4. Nothing in these SOs shall require the Board of Directors to allow members of the public or representative 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.

- 5.1.5. Notwithstanding paragraph 32.3 of the Constitution (in respect of private agendas and minutes to governors), matters to be dealt with by the Board of Directors following the exclusion of the public and representatives of the press under SO 5.1.2 above shall be confidential to the Directors. Members of the Board of Directors, Nominated Officers, Officers and others in attendance at the request of the Chair shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chair.
- 5.1.6. The Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers, advisors and others to attend and address any meeting of the Board of Directors, and may change, alter or vary these terms and conditions as it deems fit.

5.2. Calling meetings

- 5.2.1. Subject to SO 5.2.2. below, meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 5.2.2. The Chair may call a meeting of the Board of Directors 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 members of the Board of Directors and specifying the business to be transacted at the meeting, and this has been presented to them, or if, without so refusing, the Chair does not call a meeting within five (5) Working Days after such requisition has been presented to them, at the Trust's Headquarters, such one-third or more members of the Board of Directors may forthwith call a meeting for the purpose of conducting that business.

5.3. Notice of meetings

- 5.3.1. Before each meeting of the Board of Directors 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 their behalf, shall be delivered to every Director electronically, so as to be available to them at least ten (10) Working Days before the meeting save in the case of emergencies. Lack of service of the notice on any Director shall not affect the validity of a meeting subject to SO 5.3.3.
- 5.3.2. Before a public meeting of the Board of Directors, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's Headquarters and shall be advertised on the Trust's website at least then (10) Working Days before the meeting, save in the case of emergencies.
- 5.3.3. Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting but failure to serve such a notice on more than three (3) Directors will invalidate the meeting. A notice of the meeting shall be presumed to have been served one day after posting or, in the case of a notice sent electronically, on the date of transmission.
- 5.3.4. In the case of a meeting called by the Directors in default of the Chair, in accordance with SO 5.2.2 above, the notice shall be signed by those

Directors and no business shall be transacted at the meeting other than that specified in the notice.

- 5.3.5. In the event of an emergency giving rise to the need for an immediate meeting, failure to comply with the notice periods referred to in SOs 5.3.1 to 5.3.3 shall not prevent the calling of such a meeting without the requisite ten (10) Working Days notice provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

5.4. Agendas and supporting papers

- 5.4.1. Agendas will be sent to members of the Board of Directors five (5) Working Days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three (3) Working Days before the meeting, save in an emergency giving rise to the need for an immediate meeting of the Board of Directors as set out in SO 5.3.5 above. Failure to serve the agenda and (where relevant) supporting papers on more than three (3) members of the Board of Directors will invalidate the meeting. The agenda and supporting papers shall be presumed to have been served one (1) day after posting or, in the case of a notice sent electronically, on the date of transmission.

5.5. Setting the agenda

- 5.5.1. The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted ("Standing Items").
- 5.5.2. A Director desiring a matter to be included on an agenda, other than a Standing Item or a motion under SO 5.10 (emergency motions and written motions) below, including a formal motion for discussion and voting on at a meeting, shall make their request in writing to the Chair at least fourteen (14) Working Days before the meeting. Requests made less than fourteen (14) Working Days before a meeting may be included on the agenda at the discretion of the Chair. Where relevant, 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.
- 5.5.3. No business may be transacted at any meeting of the Board of Directors which is not specified in the notice of that meeting unless the Chair, in their absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Board of Directors as a matter of urgency. A decision by the Chair to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.

5.6. Petitions

- 5.6.1. Where a petition has been received by the Trust the Chair shall include the petition as an item for the agenda of the next Board of Directors meeting.

5.7. Chair of meeting

- 5.7.1. At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and they are present, shall preside. If the Chair and Deputy Chair are absent such Non-Executive Director as the members of the Board of Directors present shall choose, shall preside.
- 5.7.2. If the Chair is absent 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 members of the Board of Directors present shall choose shall preside during that period.
- 5.7.3. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Non-Executive Directors as a class, none of the Non-Executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair and the Non-Executive Directors) shall elect one of their number to preside during that period, and that person shall exercise all the rights and obligations of the Chair including, for the avoidance of doubt, the right to exercise a casting vote where the numbers of votes for and against a motion is equal.

5.8. Chair's ruling

- 5.8.1. Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and subject to SO 2.1, the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

5.9. Notices of motion

- 5.9.1. Notwithstanding the provisions of SO 5.5 above and subject to the provisions of SO 5.11 and SO 5.12, a member of the Board of Directors wishing to move or amend a motion shall send a written notice to the Chair.
- 5.9.2. The notice shall be delivered at least fourteen (14) Working Days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these SOs. Subject to SO 5.3.3, this shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

5.10. Emergency motions and written motions

Emergency motions

- 5.10.1. Subject to the agreement of the Chair, and subject also to the provision of SO 5.11, a member of the Board of Directors may give the Chair 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 by the Chair to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

Written motions

- 5.10.2. In urgent situations and with the consent of the Chair, business may be affected by a Director's written motion to deal with business otherwise required to be conducted at a meeting of the Board of Directors.
- 5.10.3. If all members of the Board of Directors have been notified of the proposal and a majority of Directors entitled to attend and vote at a meeting of the Board of Directors confirms acceptance of the written motion either in writing or electronically to the Secretary within five (5) Working Days of dispatch then the motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.
- 5.10.4. The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date a Director who has previously indicated acceptance can withdraw.
- 5.10.5. Once the resolution is passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.

5.11. Motions: procedure at and during a meeting

Who may propose?

- 5.11.1. A motion properly notified under SO 5.9 above may be proposed by the person presiding at the meeting or any other member of the Board of Directors present. All motions so proposed must also be seconded by another member of the Board of Directors.

Content of motions

- 5.11.2. The Chair may exclude from the debate at their sole discretion any motion of which notice was not given on the notice summoning the meeting other than a motion relating to:
 - 5.11.2.1. the reception of a report;
 - 5.11.2.2. consideration of any item of business before the Board of Directors;
 - 5.11.2.3. the accuracy of minutes;
 - 5.11.2.4. the Board of Directors proceeding to the next item of business on the agenda;
 - 5.11.2.5. the Board of Directors adjourning the discussion or the meeting; or
 - 5.11.2.6. the question being now put.

Amendments to motions

- 5.11.3. A motion for amendment shall not be discussed unless it has been proposed and seconded.
- 5.11.4. Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board of Directors.
- 5.11.5. If there are a number of amendments proposed and seconded to a motion, 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.

Rights of reply to motions:

- 5.11.6. 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.
- 5.11.7. The mover who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

Withdrawing a motion

- 5.11.8. A motion, or an amendment to a motion, once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

Motion under debate

- 5.11.9. When a motion is under debate, no motion may be moved other than:
 - 5.11.9.1. an amendment to the motion;
 - 5.11.9.2. the adjournment of the discussion, or the meeting;
 - 5.11.9.3. the meeting proceeding to the next item of business on the agenda;
 - 5.11.9.4. the question being now put;
 - 5.11.9.5. the appointment of an 'ad hoc' committee to deal with a specific item of business;
 - 5.11.9.6. where relevant, a motion under SO 5.1.2 or 5.1.3 to exclude the public (including the press); and
 - 5.11.9.7. a member of the Board of Directors being not further heard.
- 5.11.10. In the case of motions under SO 5.11.9.3 (proceed to next business) or 5.11.9.4 (motion be now put), in the interests of objectivity these motions

should only be put forward by a member of the Board of Directors who has not previously taken part in the debate and who is eligible to vote.

- 5.11.11. If a motion to proceed to the next item of business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.
- 5.11.12. The Chair shall have absolute discretion to the time permitted to members of the Board of Directors to move a motion or respond or reply to the motion

Motion to rescind a resolution

- 5.11.13. Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six (6) calendar months shall bear the signature of the member of the Board of Directors who gives it and also the signature of four (4) other members of the Board of Directors, and before considering any such motion of which notice shall have been given, the Board of Directors may refer the matter to any appropriate committee of the Board of Directors or the Chief Executive for recommendation.
- 5.11.14. When any such motion has been dealt with by the Board of Directors, it shall not be competent for any member of the Board of Directors, other than the Chair, to propose a motion to the same effect within six (6) calendar months; however the Chair may do so if they consider it appropriate. This SO shall not apply to motions moved in pursuance of a report or recommendations of a committee of the Board of Directors or the Chief Executive.

5.12. Voting

- 5.12.1. Subject to SO 5.14 (Suspension of SOs), or as otherwise provided by the SOs, every question at a meeting to be determined by a vote of the Directors shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a casting vote.
- 5.12.2. 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 paper ballot may also be used if a majority of the Directors present so request.
- 5.12.3. If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.
- 5.12.4. If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 5.12.5. In no circumstances may:

- 5.12.5.1. an absent Director vote by proxy (absence is defined as being absent at the time of the vote); or
- 5.12.5.2. a resolution be passed if it is opposed by all of the Non-Executive Directors present and voting, or by all of the Executive Directors present and voting.
- 5.12.6. An Officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors 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.

5.13. Minutes

- 5.13.1. The minutes of the proceedings of a meeting of the Board of Directors shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.
- 5.13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.
- 5.13.3. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 5.13.4. Minutes of the meetings of the Board of Directors shall be retained in the Chief Executive's office.
- 5.13.5. Board minutes shall be circulated in accordance with Directors' wishes.
- 5.13.6. Where providing a record of any public meeting, the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS save for items discussed by the Directors following the exclusion of the public and representatives of the press under SOs 5.1.2 and 5.1.3.

5.14. Suspension of SOs

- 5.14.1. Except where this would contravene any provision of the Regulatory Framework or any statutory provision or any guidance or best practice issued by NHS England, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 5.14.2. A decision to suspend the SOs shall be recorded in the minutes of the meeting.
- 5.14.3. A separate record of matters discussed during the suspension of the SOs shall be made and shall be available to the Directors.
- 5.14.4. No formal business may be transacted while the SOs are suspended.

5.14.5. The Audit Committee shall review every decision to suspend the SOs.

5.15. Record of attendance and apologies

5.15.1. The names of the Directors present at the meeting shall be recorded in the minutes, together with the names of any Nominated Officers, Officers and others invited by the Chair to be in attendance, save for any members of the public or representatives of the press.

5.15.2. Directors who are unable to attend a meeting of the Board of Directors shall notify the Secretary in writing in advance of the meeting in question so that their apologies may be submitted.

5.16. Quorum

5.16.1. No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors are present including at least one Executive Director and one Non-Executive Director.

5.16.2. An Officer in attendance for an Executive Director but without formal acting up status as described in SO 4.12.6 above may not count towards the quorum.

5.16.3. 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 SO 8) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director or a Non-Executive Director to form part of the quorum shall not apply where:

5.16.3.1. the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Nominations & Remuneration Committee established under SO 7 below); or

5.16.3.2. the Non-Executive Directors are excluded from a meeting (for example in accordance with SO 5.7.3 above).

5.17. Meetings: electronic communication

5.17.1. In this SO "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

5.17.2. The Board of Directors may agree that its members can participate in its meetings by telephone, video or video media link. Participation in a meeting in this manner, including the ability to communicate interactively and simultaneously with all other attendees of the meeting, shall be deemed to constitute presence in person at the meeting.

- 5.17.3. A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
- 5.17.4. Meetings held in accordance with this SO are subject to SO 5.18. For such a meeting to be valid, a quorum **MUST** be present and maintained throughout the meeting.
- 5.17.5. The minutes of a meeting held in this way **MUST** state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

5.18. Adjournment of meetings

- 5.18.1. The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting.
- 5.18.2. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 5.18.3. When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted and the date, time and place of the adjournment.

5.19. Reports from the Executive Directors

- 5.19.1. At any meeting of the Board of Directors a Director may ask any question through the Chair without notice on any report by an Executive Director, or other Officer of the Trust, after that report has been received by or while such report is under consideration by the Board of Directors at the meeting. The Chair may, in their absolute discretion, reject any question from any Director if, in their opinion, the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting.

6 Arrangements for the Exercise of Functions by Delegation

- 6.1. Subject to any legal restriction or prohibition, SO 3.6 and such guidance or best practice advice as may be issued by NHS England, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub committee of Directors or to an Executive Director appointed by virtue of SO 7 below, in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

6.2. Emergency powers

- 6.2.1. The powers which the Board of Directors has retained to itself within these SOs may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two (2) other Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be

reported to the next formal meeting of the Board of Directors for ratification.

6.3. Delegation to committees

- 6.3.1. The Board of Directors shall agree from time to time to the delegation of powers to be exercised by committees of the Board of Directors, which it has formally constituted. The constitution and terms of reference of these committees and their specific powers shall be approved by the Board of Directors.

6.4. Delegation to Nominated Officers

- 6.4.1. Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee of the Board of Directors or an Executive Director (as the case may be) shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Officers to undertake the remaining functions for which they will still retain accountability to the Board of Directors.
- 6.4.2. The Chief Executive shall prepare a Scheme of Delegation identifying their proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 6.4.3. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or other Director to provide information and advise the Board of Directors in accordance with any statutory requirements. Outside these statutory requirements the Finance Director shall be accountable to the Chief Executive for operational matters.
- 6.4.4. The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs, but for the avoidance of doubt, the Scheme of Delegation does not form part of the Constitution.

6.5. Duty to report non-compliance with SOs

- 6.5.1. If for any reason these SOs 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 of Directors for action or ratification. All members of the Board of Directors and all Officers (including Nominated Officers) have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

7 Committees

7.1. Appointment of committees

- 7.1.1. Subject to any legal restriction or prohibition, SO 3.6 and such guidance or best practice advice issued by NHS England the Board of Directors may and, if directed by NHS England, shall appoint committees of the Trust consisting wholly or partly of Directors.
- 7.1.2. A committee appointed under SO 7.1.1 may, subject to the Regulatory Framework and such guidance and best practice advice issued by NHS England or the Board of Directors, appoint sub-committees consisting wholly or partly of Directors or wholly of persons who are not Directors.
- 7.1.3. The SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees (and any sub-committees or joint committees appointed under SO 7.1.2) established by the Board of Directors, in which case the term "Chair" is to be read as a reference to the Chair of the committee (or sub-committee or joint committee) as the context permits, and the term "member" is to be read as a reference to a member of the committee (or sub-committee or joint committee) also as the context permits. For the avoidance of doubt, sub-committees and joint committees are not required to hold meetings in public.
- 7.1.4. Each such committee or sub-committee or joint committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation and/or regulations and/or such guidance or best practice advice issued by NHS England.
- 7.1.5. Where committees are authorised to establish sub-committees they may not delegate powers to the sub-committee unless expressly authorised by the Board of Directors.
- 7.1.6. The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines, and the Regulatory Framework permits, that persons who are neither Directors nor Officers shall be appointed to a committee, the terms of such appointment shall be within the powers of the Board of Directors as defined by the Regulatory Framework. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.
- 7.1.7. Where the Board of Directors is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State for Health and/or NHS England, and where such appointments are to operate independently of the Trust, such appointment shall be made in accordance with the regulations and guidance made by NHS England.
- 7.1.8. The committees established by the Board of Directors are:
 - 7.1.7.1. Audit Committee;
 - 7.1.7.2. Nominations & Remuneration Committee;
 - 7.1.7.3. such other Committees as deemed necessary by the Board of Directors from time to time; and

- 7.1.7.4. a committee comprising the Board of Directors who can operate as a committee in their own right.

The terms of reference of those Committees shall be agreed by the Board of Directors.

7.2. Confidentiality

- 7.2.1. A member of a committee (including sub-committees or joint committees) shall not disclose any matter dealt with, by, or brought before, the committee (or sub-committee or joint committee) without its permission until the committee (or sub-committee or joint committee) shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 7.2.2. A Director or a member of a committee (or sub-committee or joint committee) shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee (or sub-committee or joint committee), notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee resolve that it is confidential.

8 Interface between the Board of Directors and the Council of Governors

- 8.1. The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution.
- 8.2. The Directors, having regard to the views of the Council of Governors, are to prepare the Forward Plan in respect of each Financial Year to be given to NHS England.
- 8.3. The Directors are to present to the Council of Governors at a general meeting of the Council of Governors the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 8.4. The Annual Report is to give:
 - 8.4.1. information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership; and
 - 8.4.2. any other information which NHS England requires.
- 8.5. In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out in SOs 8.1 and 8.2, the Council of Governors may request that a matter which relates to paragraphs 46 and 47 of the Constitution is included on the agenda for a meeting of the Board of Directors.
- 8.6. If the Council of Governors so desires such a matter as described within SO 8.5 to be included on an agenda item, they shall make their request in writing to the Chair at least fourteen (14) Working Days before the meeting of the Board of Directors, subject to SO 5.3. The Chair shall decide whether the matter is appropriate to be included on the Agenda. Requests made less than fourteen (14) Working Days before a meeting may be included on the agenda at the discretion of the Chair.

9 Declarations of Interests and Register of Interests of the Board of Directors

- 9.1. Subject to paragraph 34 of the Constitution the Board of Directors are also required to declare to the Secretary:
 - 9.1.1. any pecuniary interest in any contract, proposed contract or other matter which is under consideration concerning the Trust or is to be considered by the Board of Directors; and
 - 9.1.2. any interests including but not limited to any personal or family interests which are relevant and material to the business of the Trust, irrespective of whether those interests are direct or indirect, actual or potential.
- 9.2. All existing members of the Board of Directors must declare such interests as soon as the Director in question becomes aware of it.
- 9.3. Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared in accordance with the Constitution or the SOs and delivering it to the Secretary as soon as the Director in question becomes aware of the interest.
- 9.4. In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, they must at the meeting and as soon as practicable after its commencement disclose the fact and they must then withdraw from the meeting and play no part in the relevant discussion and they shall not vote on any question with respect to the matter.
- 9.5. If a Director has declared a pecuniary interest in accordance with SO 9.9 below they shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that matter is under consideration. At the time the interests are declared, they should be recorded in the Directors' meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 9.6. Interests which should be regarded as "relevant and material" for the purposes of these SOs are as follows and are to be interpreted in accordance with guidance or best practice advice issued by NHS England:
 - 9.6.1. directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - 9.6.2. ownership, part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Trust;
 - 9.6.3. employment with any private company, business or consultancy;
 - 9.6.4. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Trust;
 - 9.6.5. a position of authority in a charity or voluntary organisation in the field of health and social care;

- 9.6.6. any connection with a voluntary or other organisation contracting for NHS or the Trust services or commissioning NHS or the Trust services;
 - 9.6.7. any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks;
 - 9.6.8. research funding or grants that may be received by an individual or their department; and
 - 9.6.9. interests in pooled funds that are under separate management.
- 9.7. Any travelling or other expenses or allowances payable to a Director in accordance with the Constitution shall not be treated as a pecuniary interest.
- 9.8. Members of the Board of Directors who hold directorships in board of directors of companies likely or possibly seeking to do business with the NHS or the Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 9.9. A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 9.9.1. they, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 9.9.2. they are a partner or associate of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 9.10. A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 9.10.1. of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
 - 9.10.2. of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 9.11. Where a Director:
- 9.11.1. 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
 - 9.11.2. the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and

- 9.11.3. if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- 9.11.4. the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest in accordance with the Constitution and these SOs.
- 9.12. In the case of Immediate Family Members the interest of one Immediate Family Member shall, if known to the other, be deemed for the purposes of the Constitution and the SOs to be also an interest of the other.
- 9.13. If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. 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.
- 9.14. Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO 9.
- 9.15. SO 9 applies to any committee, sub-committee or joint committee of the Board of Directors and applies to any member of any such committee, sub-committee or joint committee (whether or not they are also a Director).

9.16. Register of interests of the members of the Board of Directors

- 9.16.1. The register of interests of the members of the Board of Directors shall contain the names of each Director, whether they have declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.
- 9.16.2. In accordance with SO 9.3 above, it is the obligation of the Director to inform the Secretary in writing of the existence of a relevant or material interest as soon as they are aware of the same. The Secretary shall be responsible for compiling and maintaining the registers in accordance with paragraph 36 of the Constitution.
- 9.16.3. The register of interests of the members of the Board of Directors will be made available to the public in accordance with paragraph 38 of the Constitution.

10 Standards of Business Conduct

10.1. Policy

- 10.1.1. Directors and (where relevant) Nominated Officers should comply with the Directors' Code of Conduct and any guidance and best practice advice issued by the NHS England or the Standards Committee. This section of the SOs should be read in conjunction with these documents.

10.2. Interest of Directors and Officers in contracts

- 10.1.2. Any Director or Officer who comes to know that the Trust has entered into or proposes to enter into a contract in which they have any pecuniary

interest, direct or indirect, shall give notice in writing of such fact to the Chief Executive or Secretary as soon as they are aware of the fact. In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed to be also the interest of that Immediate Family Member.

- 10.1.3. A Director or Officer must also declare to the Chief Executive or Secretary any other employment or business or other relationship of theirs, or of an Immediate Family Member, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with SO 9. The Trust shall require such interests to be recorded in the register of interests of members of the Board of Directors.

10.3. Canvassing of, and recommendations by, Directors in relation to appointments

- 10.3.1. Canvassing of Directors or members of any committee, sub-committee or joint committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.
- 10.3.2. A Director of the Board of Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this SO 10.3.2 shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 10.3.3. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.

10.4. Relatives of Directors or Officers

- 10.4.1. Directors and Officers shall bear in mind that candidates for any staff appointment under the Trust shall when making an application disclose in writing to the Trust 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 them liable to instant dismissal.
- 10.4.2. The Directors and Officers shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 10.4.3. On appointment, Directors must disclose to the Chief Executive whether they are related to any other member of the Board of Directors, the Council of Governors or holder of any office in the Trust.
- 10.4.4. Where the relationship to an Officer, Governor or another Director is disclosed, SO 9 shall apply.

10.5. External consultants

- 10.5.1. SO 10 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

10.6. Fit and Proper Person Test

- 10.6.1 In addition to paragraph 3.23 In accordance with Regulation 5 and Schedule 4 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 the holders of executive and non-executive, permanent, interim and associate positions are required to make (and keep up to date) a self-declaration that they are fit and proper to hold office and to provide additional information as required to enable the Chair to make the declaration that they are fit and proper to hold office. Failure to do so will result in actions being taken as set out in the Trust's Fit and Proper Persons Policy.

11 Custody of the Seal and Sealing of Documents

11.1. Custody of seal

- 11.1.1. The common seal of the Trust shall be kept by the Chief Executive or Nominated Officer in a secure place.

Sealing of documents

- 11.2.1. The common seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof where the Board of Directors has delegated its powers in accordance with the Scheme of Delegation.
- 11.2.2. Before any building, engineering or property document is sealed it must be approved and signed by the Finance Director (or their Nominated Officer) and authorised and countersigned by the Chief Executive (or their Nominated Officer who shall not be within the originating Directorate).
- 11.2.3. Where it is necessary that a document shall be sealed, the common seal of the Trust shall be affixed in the presence of two Officers duly authorised by the Chief Executive, and also not from the originating department, and shall be attested by them.

11.2. Register of sealing

- 11.3.1. The Secretary shall make an entry of every sealing (numbered consecutively in a book provided for that purpose), and the Secretary shall ensure that each entry is signed by the persons who shall have approved and authorised the document and those who attested the seal. The Secretary shall make a report of all sealing to the Board of Directors at least quarterly. The report shall contain details of the seal number, the description of the document and date of sealing.

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, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

- 12.2. The Chief Executive or Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee of the Board of Directors or sub-committee to which the Board of Directors has delegated appropriate authority.
- 12.3. Notwithstanding the generality of SOs 11.1 and 11.2 above, in land transactions the signing of certain supporting documents may be delegated to Nominated Officers, as set out in the Scheme of Delegation, but will not include the main of principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works, or main warranty agreements) or any document which is required to be executed as a deed.

13 Indemnity

- 13.1. Members of the Board of Directors and the Secretary 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 functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Board of Directors and the Secretary.

14 Miscellaneous

- 14.1. Directors shall comply with Standing Financial Instructions prepared by the Finance Director and approved by the Board for the guidance of all staff employed by the Trust.
- 14.2. Directors must behave in accordance with the seven Nolan principles of behavior in Public Life:
- i. selflessness;
 - ii. integrity;
 - iii. objectivity;
 - iv. accountability;
 - v. openness;
 - vi. honesty; and
 - vii. leadership.

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

- 14.3. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with paragraph 5 of Annex 8 (Dispute Resolution Procedure).
- 14.4. Board Performance - The Chair, with the assistance of the Trust Secretary, shall lead, at least annually, a performance assessment process for the Board. This process should act as the basis for determining individual and collective professional development programmes for Directors.
- 14.5. The validity of any act of the Board is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.
- 14.6. Review of SOs - The SOs shall be reviewed annually by the Trust. The requirement for review extends to the Scheme of Delegation and the SFIs, which shall have effect as if incorporated into these SOs, but for the avoidance of doubt neither the Scheme of Delegation nor the SFIs form part of the Constitution.
- 14.7. Corporate documents - Any documents specific to the setting up of the Trust, shall be held in a secure place by the Chief Executive.

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ANNEX 7 - FURTHER PROVISIONS RELATING TO MEMBERS

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1 Membership

- 1.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those within the Public Constituency eligible for membership. To this end the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least every three years.
- 1.2 In conducting its affairs, the Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Trust as set out in the Human Rights Act 1998.

2 Disqualification from membership of the Trust

- 2.1 A person may not become or continue as a Member of the Trust if:
 - 2.1.1. they are under 16 years of age at the date of their application or invitation to become a Member (as the case may be);
 - 2.1.2. they have demonstrated aggressive or violent behaviour at any Trust Premises or against any of the Trust's or (as the case may be) the Trust's employees or other persons who exercise functions for the purposes of the Trust and following such behaviour they have been asked to leave, or has been removed or excluded from any Trust Premises in accordance with the relevant Trust policies for withholding treatment from violent/aggressive patients;
 - 2.1.3. they have been removed as a member from another NHS foundation trust;
 - 2.1.4. they have been deemed to have acted in a manner contrary to the interests of the Trust;
 - 2.1.5. they fail or ceases to fulfil the criteria for membership of the Public Constituency or the Staff Constituency.
- 2.2 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, the Secretary shall give the Member 14 days written notice to show cause why their name should not be removed from the Trust's register of Members. On receipt of any such information supplied by the Member, the Secretary may, if they consider it appropriate, remove the Member from the Trust's register of Members. In the event of any dispute about entitlement to membership, the dispute shall be resolved in accordance with the procedure set out in Annex 8.
- 2.3 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

3 Expulsion from membership of the Trust

- 3.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 3.2 Any Member may complain to the Secretary that another Member has acted in a way detrimental to or contrary to the interests of the Trust, or is otherwise disqualified as set out in paragraph 3.1 above.
- 3.3 Subject to 3.4 to 3.6 below, if a complaint is made, the Council of Governors, or a delegated committee, sub-committee or joint committee of the Council of Governors and the Board of Directors, will consider the complaint, having taken such steps as it considers appropriate, to ensure that each Member's point of view is heard and may either:
 - 3.3.1. dismiss the complaint and take no further action; or
 - 3.3.2. arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.
- 3.4 If a resolution to expel a Member is to be considered at a meeting of the Council of Governors pursuant to paragraph 3.3.2 above, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and to attend the meeting.
- 3.5 At the meeting referred to in paragraph 3.4 above, the Council of Governors will consider the evidence in support of the complaint and such other evidence as the Member complained of may wish to place before them.
- 3.6 If the Member complained of fails to attend the meeting mentioned in paragraph 3.3.2 above without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 3.7 A person expelled from membership under the provisions of paragraphs 3.1 to 3.4 above will cease to be a Member upon the declaration by the person chairing the meeting that the resolution to expel them is carried.
- 3.8 No person who has been expelled from membership pursuant to the provisions of paragraph 3.1 to 3.7 above is to be re-admitted as a Member except by a resolution of the Council of Governors carried by votes of two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

4 Termination of Membership

4.1 A Member shall cease to be a Member on:

- 4.1.1. death; or
- 4.1.2. resignation by notice in writing to the Secretary; or
- 4.1.3. ceasing to fulfil the requirements of paragraph 2 of this Annex or paragraph 11 of this Constitution, as the case may be; or
- 4.1.4. being disqualified pursuant to paragraph 2 above, or being expelled pursuant to paragraph 3 above.

5 Member's Meetings

- 5.1 Notwithstanding any provisions contained in this Constitution regarding meetings of the Council of Governors (including the Annual Member's Meeting) and the Board of Directors, the Board of Directors may resolve to call special meetings of the Trust for the benefit of its Members (a "Members' Meeting") for the purpose of providing Members with information and to offer Members an opportunity to provide feedback to the Trust.
- 5.2 For the avoidance of doubt, a Members' Meeting can be held concurrently with an Annual General Meeting if it is appropriate to do so.
- 5.3 Members' Meetings are open to all Members of the Trust, Governors, Directors, representatives of the Auditor and any external consultant, and to members of the general public.
- 5.4 Notwithstanding the provisions of paragraph 5.3 above, the Board of Directors may invite representatives of the press and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a Members' Meeting.
- 5.5 All Members' Meetings are to be convened by the Secretary by order of the Board of Directors and the following provisions of paragraphs 5.6 and 5.7 below shall apply for these purposes.
- 5.6 Notice of a Members' Meeting is to be given to all Members, Governors, Directors, the Auditor and any external consultant personally, or by notice prominently displayed at the Trust's Headquarters; and by notice on the Trust's website, at least fourteen (14) Working Days before the date of the meeting.
- 5.7 The notice referred to in paragraph 5.6 above must
 - 5.7.1. state the time, date and place of the meeting; and
 - 5.7.2. indicate the business to be dealt with at the meeting.
- 5.8 No business may be conducted at a Members' Meeting unless a quorum is present. The quorum for a Members' Meetings is the Chair (or Deputy Chair) and at least one Governor and one Non-Executive Director.
- 5.9 It is the responsibility of the person chairing the meeting to ensure that:
 - 5.9.1. any issues to be decided upon at the meeting are clearly explained; and

- 5.9.2. sufficient information is provided to those in attendance to enable rational discussion to take place.
- 5.10 The Chair, or in their absence the Deputy Chair, shall act as Chair at all Members' Meetings. If neither the Chair nor the Deputy Chair is present, the members of the Board of Directors present shall elect one of their number to chair the meeting. If there is only one Director present and willing to act, then they shall chair the meeting.
- 5.11 If at any Members' Meeting there is no quorum present within sixty (60) minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned to such date, time and place as the person chairing the meeting shall in their absolute discretion determine, and the Secretary shall give or shall procure the giving of notice to all Members, Governors, Directors, the Auditor and any external consultant of the date, time and place of that adjourned meeting. Notwithstanding the provisions of paragraph 5.8 above, upon reconvening, those present shall constitute a quorum.
- 5.12 Any resolution put to the vote at a Members' Meeting shall be decided upon by a poll.
- 5.13 Every Member present and every Member who has voted by post or using electronic communications (as defined in Annex 5, SO 21) is to have one (1) vote. In the case of an equality of votes the person chairing the meeting is to have a casting vote.
- 5.14 The result of any vote will be declared by the person chairing the meeting and the Secretary shall cause the result to be entered in the minute book. The minute book will be conclusive evidence of the result of that vote.

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ANNEX 8 – DISPUTE RESOLUTION PROCEDURES

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1) The Role of Council

1.1. The Council has three main roles:

- 1.1.1 Advisory - It communicates to the Board the wishes of Members and the wider community.
- 1.1.2 Guardianship - It ensures that the Trust is operating in accordance with its Statement of Purpose and is compliant with its Provider Licence. In this regard it acts in a trustee role for the welfare of the organisation and it is required to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors in the delivery of its principal purposes as defined in paragraph 3 of the Constitution, and
- 1.1.3 Strategic - It advises on a longer term direction to help the Board effectively determine its policies.

2) The Role of the Board

2.1. The Board has overall responsibility for running the affairs of Trust. Its role is to:

- 2.1.1. Take advice from the Council;
- 2.1.2. Set a strategic direction;
- 2.1.3. Set organisational and operational targets;
- 2.1.4. Minimise risk;
- 2.1.5. Assess achievement against the above objectives;
- 2.1.6. Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives; and
- 2.1.7. Ensure that the highest standards of Corporate Governance are applied throughout the organisation.

3) The Role and Responsibility of the Secretary

- 3.1. The Trust shall have a Secretary who may be an Officer of the Trust, but may not be a Governor, the Chief Executive, the Finance Director or the Chair of the Trust.
- 3.2. The Secretary is to be appointed and removed in accordance with the Scheme of delegation of the Trust.
- 3.3. Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected to:
 - 3.3.1. ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors, and Members;
 - 3.3.2. ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for the Board of Directors) are complied with;

- 3.3.3. ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for the Council of Governors) are complied with;
- 3.3.4. advise the Board of Directors and the Council of Governors (through the Chair or the Deputy Chair, as the case may be) on all governance matters;
- 3.3.5. be available to give advice and support to individual Directors and Governors and assistance with professional development;
- 3.3.6. be available to give advice and guidance to Directors and Governors on their respective statutory duties and corporate governance-related matters;
- 3.3.7. attend as necessary all meetings of the Board of Directors and Council of Governors including their committees, sub-committees and joint committees, and to keep accurate minutes of these meetings; and
- 3.3.8. attend Members' meetings and keep accurate minutes of these meetings.

4) The Role of the Senior Independent Director

- 4.1 The Senior Independent Director (SID) is a Non-Executive Director appointed by the Board of Directors as a whole in consultation with the Council of Governors to undertake the role. The SID may be, but does not have to be, the Deputy Chair of the Board of Directors. The SID will be available to members of the Foundation Trust and to Governors if they have concerns which, contact through the usual channels of the Chair, Chief Executive, Finance Director and Company Secretary, has failed to resolve or where it would be inappropriate to use such channels. In addition to the duties described here the SID has the same duties as the other Non-Executive Directors.
- 4.2 The SID has a key role in supporting the Chair in leading the Board of Directors and acting as a sounding board and source of advice for the Chair. The SID also has a role in supporting the Chair as Chairperson of the Council of Governors.
- 4.3 The SID should hold a meeting with the other Non-Executive Directors in the absence of the Chair at least annually as part of the appraisal process. There may be other circumstances where such meetings are appropriate. Examples might include informing the re-appointment process for the Chair, where Governors have expressed concern regarding the Chair or where the Board is experiencing a period of stress as described below.
- 4.4 Whilst the Council of Governors determines the process for the annual appraisal of the Chair, the SID is responsible for carrying out the appraisal of the Chair on their behalf as set out as best practice in the Code of Governance. The SID might also take responsibility for an orderly succession process for the Chair's role where a re-appointment or a new appointment is necessary.
- 4.5 The SID should maintain regular contact with the Council of Governors and attend meetings of the Council of Governors to obtain a clear understanding of Governors' views on the key strategic and performance issues facing the Foundation Trust. The SID should also be available to Governors as a source of advice and guidance in circumstances where it would not be appropriate to involve the Chair, for example, the Chair's appraisal or setting the Chair's objectives.

- 4.6 In rare cases where there are concerns about the performance of the Chair, the SID should provide support and guidance to the Council of Governors in seeking to resolve concerns or, in the absence of a resolution, in taking formal action. Where the Foundation Trust has appointed a Lead Governor, the SID should liaise with the Lead Governor in such circumstances.
- 4.7 In circumstances where the Board is undergoing a period of stress, the SID has a vital role in intervening to resolve issues of concern. These might include unresolved concerns on the part of the Council of Governors regarding the Chair's performance; where the relationship between the Chair and Chief Executive is either too close or not sufficiently harmonious, where the FT's strategy is not supported by the whole Board or where key decisions are being made without reference to the Board or where succession planning is being ignored.
- 4.8 In the circumstances outlined above the SID will work with the Chair, other Directors and/or Governors to resolve significant issues. The Board of Directors and the Council of Governors need to have a clear understanding of when the SID might intervene.
- 4.9 The Deputy SID shall support the work of the SID and if the SID is unable to discharge their functions, the Deputy will be the "acting SID" of the Trust until such time as the SID is able to discharge their functions, or a new SID is appointed.

5) Dispute Resolution Between the Council and the Board

- 5.1. Should a dispute arise between the Council and the Board which cannot be resolved with the support of the Secretary and/or the Senior independent Director then the dispute resolution procedure set out below recognises the different roles of the Council and the Board as described in paragraphs 1 and 2 above.
- 5.1.1. The Chair (or Senior Independent Director, if the dispute involves the Chair) shall first endeavour through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 5.1.2. Failing resolution under 5.1.1 above then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 5.1.3. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 5.1.4. The Chair (or Senior Independent Director, if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 5.1.1 above shall be repeated.
- 5.1.5. If, in the opinion of the Chair (or Senior Independent Director, if the dispute involves the Chair), and following the further discussions prescribed in 5.1.1, there is no further prospect of a full resolution or, if at any stage in the whole

process, in the opinion of the Chair or Senior Independent Director, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council and the Board accordingly.

5.1.6. On the satisfactory completion of this disputes process the Board shall implement agreed changes.

5.1.7. On the unsatisfactory completion of this disputes process the view of the Board shall prevail.

5.2. Nothing in this procedure shall prevent the Council, if it so desires, from informing NHS England that, in the Council's opinion, the Board has not responded constructively to concerns of the Council.

5.3. Nothing in this procedure shall prevent the Council, if it so desires, from approaching the panel of persons appointed by NHS England, such an approach must be made in accordance with paragraph 21 of the Constitution.

6) Membership Disputes

6.1. 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 with reference to any and all relevant evidence available from any source. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary they may appeal in writing within 21 days of the Secretary's decision to the Council of Governors or a delegated committee or sub-committee of the Council of Governors or a joint committee of the Council of Governors and the Board of Directors, whose decision shall be final. (Nothing in this Constitution shall prevent a member or applicant from referring this matter for review to an external body or agency)