

University Hospitals Sussex NHS Foundation Trust

Constitution

Version 0.1 October 2020 (for enlarged FT)
Version 0.2 November 2020 (revised post capsticks review)
Version 0.3 Considered by Governors in December 2020
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Version 1.2 March 2025 (removed gender specifics, adjust for NHS I being subsumed into NHS England, Annex 4: Additional Provisions Council of Governors removal of reference to formal Deputy Lead Governor and add clarity about pre-requisite values, and added Annex 10: Summary of Scheme of Reservation)

University Hospitals Sussex NHS Foundation Trust

TABLE OF CONTENTS

| | | |
|-----|---|----|
| 1. | Interpretation and definitions | 4 |
| 2. | Name | 4 |
| 3. | Principal purpose | 5 |
| 4. | Powers | 5 |
| 5. | Membership and constituencies | 5 |
| 6. | Application for membership | 5 |
| 7. | Public Constituency | 5 |
| 8. | Staff Constituency | 6 |
| 9. | Restriction on membership | 7 |
| 10. | Annual Members' Meeting | 7 |
| 11. | Council of Governors – composition | 7 |
| 12. | Council of Governors – election of governors | 7 |
| 13. | Council of Governors – tenure | 8 |
| 14. | Council of Governors – disqualification and removal | 10 |
| 15. | Council of Governors – duties of governors | 11 |
| 16. | Council of Governors – meetings of governors | 11 |
| 17. | Council of Governors – standing orders | 12 |
| 18. | Council of Governors – referral to the Panel | 12 |
| 19. | Council of Governors - conflicts of interest of governors | 12 |
| 20. | Council of Governors – travel expenses | 12 |
| 21. | Council of Governors – further provisions | 12 |
| 22. | Board of Directors – composition | 13 |
| 23. | Board of Directors – general duty | 13 |
| 25. | Board of Directors – appointment and removal of Chair and other non-executive directors | 14 |
| 26. | Board of Directors – appointment of deputy Chair and senior independent director | 14 |
| 28. | Board of Directors – disqualification | 15 |
| 29. | Board of Directors – meetings | 15 |
| 30. | Board of Directors – standing orders | 15 |
| 31. | Board of Directors - conflicts of interest of directors | 15 |
| 32. | Board of Directors – remuneration and terms of office | 17 |
| 33. | Registers | 17 |
| 34. | Admission to and removal from the registers | 17 |
| 35. | Registers – inspection and copies | 18 |
| 36. | Documents available for public inspection | 18 |
| 37. | External Auditor | 19 |
| 38. | Audit committee | 20 |
| 39. | Accounts | 20 |
| 40. | Annual report, forward plans and non-NHS work | 20 |
| 41. | Presentation of the annual accounts and reports to the governors and members | 21 |
| 42. | Instruments | 21 |
| 43. | Amendment of the Constitution | 21 |
| 44. | Mergers etc. and significant transactions | 22 |
| 45. | Indemnity | 23 |

- Annex 1 – Constituency Details – Public / Staff / Patient
- Annex 2 – Composition of Board of Governors
- Annex 3 – The Model Election Rules
- Annex 4 – Additional Provisions – Board of Governors
- Annex 5 – Standing Orders – Board of Governors
- Annex 6 – Standing Orders – Board of Directors
- Annex 7 – Further Provisions
- Annex 8 – Role Descriptions for Governor and Lead Governor
- Annex 9 – Governor Code of Conduct
- Annex 10 – Scheme of Reservation

1. Interpretation and definitions

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

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

the 2006 Act is the National Health Service Act 2006.

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

the 2022 Act is the Health and Care Act 2022

Acquisition Date means the date of the acquisition by Western Sussex Hospitals NHS Foundation Trust (**WSHFT**) of Brighton and Sussex University Hospitals NHS Trust (**BSUHT**) being the date on which NHS Improvement granted the application of WSHFT to acquire BSUHT pursuant to Section 56A of the 2006 Act.

Annual Members Meeting is defined in paragraph 10 of the Constitution.

Constitution means this constitution and all annexes to it.

Initial Public Governors means the elected public governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Initial Staff Governors means the elected staff governors of the Trust who hold office with WSHFT immediately prior to the Acquisition Date, as set out in Part A of Annex 2.

Monitor is the body corporate known (together with the NHS Trust Development Authority) as NHS Improvement now NSH England and created pursuant to Section 61 of the 2012 Act.

the Accounting Officer is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

Code of Governance for NHS Provider Trusts means the Code of Governance for NHS Provider Trusts published by NHS England in October 2022 or such similar or further guidance as NHS England may publish from time to time.

2. Name

The name of the Foundation Trust is University Hospitals Sussex NHS Foundation Trust (the **Trust**).

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.
- 3.2 The Trust does not fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

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

5. Membership and constituencies

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
 - 5.1.1 a public constituency; or
 - 5.1.2 a staff constituency

6. Application for membership

- 6.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust.

7. Public Constituency

- 7.1 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.

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

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

8. Staff Constituency

8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:

8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

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

8.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 1 and being referred to as a class within the Staff Constituency.

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 1.

Automatic membership by default – staff

8.6 An individual who is:

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

8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a member of the Trust as a member of the Staff Constituency and

appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

9. Restriction on membership

- 9.1 An individual, who is a member of a constituency, or of an area or class within a constituency, may not while membership of that constituency, area or class continues, be a member of any other constituency, area or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 An individual must be at least 16 years old to become a member of the Trust.
- 9.4 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 – Further Provisions Part B (Membership of the Trust).

10. Annual Members' Meeting

- 10.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

11. Council of Governors – composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The composition of the Council of Governors is specified in Annex 2 and shall change in accordance with the dates set out in Table 1 and Table 2 of Annex 2.
- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are areas or classes within a constituency, by their area or class within that constituency.
- 11.4 To reflect the enlarged size of the Trust, the public constituency and the staff constituency and the number of governors to be elected by each constituency, or, where appropriate, by each area or class of each constituency, shall increase and shall be revised on the dates specified in Annex 2.

12. Council of Governors – election of governors

- 12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of

first past the post (FPP) polling and the Model Election Rules shall be construed accordingly.

- 12.2 The Model Election Rules as published by NHS Providers (previously the Foundation Trust Network) form part of this Constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 3.
- 12.3 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 43 of the Constitution (amendment of the Constitution).
- 12.4 An election, if contested, shall be by secret ballot.

13. Council of Governors – tenure

- 13.1 The composition of the Council of Governors as at the Acquisition Date is set out in Table 1 of Annex 2. In determining which Initial Public Governors and Initial Staff Governors transfer at the Acquisition Date, the process set out in paragraphs 13.2 – 13.6 below will apply.

Lead governor

- 13.2 The lead governor elected to represent the public constituency and holding office immediately prior to the Acquisition Date will transfer automatically to the same public constituency area to sit as lead governor from the Acquisition Date. For the avoidance of doubt, if no lead governor holds office immediately prior to the Acquisition Date than this paragraph 13.2 shall not apply.

Initial Public Governors

- 13.3 After applying paragraph 13.2, where the total number of Initial Public Governor posts that would qualify to represent a specific public constituency area is:
 - 13.3.1 equal to or fewer than the number of posts available for that public constituency area, the Initial Public Governor(s) shall transfer automatically;
 - 13.3.2 greater than the number of posts available for that public constituency area, then the process set out in paragraph 13.4 below will apply.
- 13.4 Where on the Acquisition Date there is a greater number of Initial Public Governors for any public constituency area those Initial Public Governors with the greatest aggregate consecutive length of service will automatically vacate office first with the Initial Public Governor with the next greatest aggregate consecutive length of service vacating office second until the remaining number of Initial Public Governors is equal to the relevant constituency area at which point all remaining Initial Public Governors shall transfer automatically.

Initial Staff Governors

- 13.5 Where the total number of Initial Staff Governors posts that would qualify to represent a specific staff class is:
- 13.5.1 equal to the number of posts available for that staff class, the Initial Staff Governor(s) shall transfer automatically;
 - 13.5.2 greater than the number of posts available for that staff class then the process set out in paragraph 13.6 below will apply.
- 13.6 Where on the Acquisition Date there is a greater number of Initial Staff Governors for any staff class than available posts, those Initial Staff Governors with the shortest aggregate consecutive length of service will automatically vacate office first with the Initial Staff Governor with the next shortest aggregate consecutive length of service vacating office second until the remaining number of Initial Staff Governors is equal to the relevant staff class at which point all remaining Initial Staff Governors shall transfer automatically.
- 13.7 For the avoidance of doubt, as at the Acquisition Date there will be no elected public governors for the Brighton & Hove and Mid Sussex areas of the public constituency and no elected staff governors for the Princess Royal Hospital and Royal Sussex County Hospital staff class.
- 13.8 The first governor election held after the Acquisition Date to fill the governor vacancies identified in paragraph 13.7 above shall be conducted in such a way as to result in the initial terms of office for those elected governors to end on a phased basis to ensure that those elected governors do not all vacate the office on the same day and in order that future elections also occur on a phased basis. As demonstrated in the below table and summarised as follows: in relation to the first elections for the:
- 13.8.1 public governors; in respect of the candidates for Brighton & Hove and Mid Sussex, the candidate with the highest number of votes shall hold office for a period of three years and where more than one governor post is available, the candidate with the second highest number of votes shall hold office for a period of two years;
 - 13.8.2 staff governor; in respect of the candidate for the Princess Royal Hospital class, the candidate with the highest number of votes shall hold office for a period of two years;
 - 13.8.3 staff governor; in respect of the candidate for the Royal Sussex County Hospital class, the candidate with the highest number of votes shall hold office for a period of three years.

| Constituency | Class | 3-year terms | 2-year terms | Total |
|--------------|-----------------|--------------|--------------|-------|
| Public | Brighton & Hove | 1 | 1 | 2 |

| Constituency | Class | 3-year terms | 2-year terms | Total |
|--------------|------------------------------|--------------|--------------|-------|
| Public | Mid Sussex | 1 | 1 | 2 |
| Staff | Princess Royal Hospital | 0 | 1 | 1 |
| Staff | Royal Sussex County Hospital | 1 | 0 | 1 |
| | Totals | 3 | 3 | 6 |

- 13.9 An elected governor may hold office for a period of up to 3 years from the date of nomination and at the end of this term they shall be eligible for re-election for up to two further terms of up to 3 years each (i.e. 9 years in total). For the avoidance of doubt, the Initial Public Governors and Initial Staff Governors that shall transfer after the Acquisition Date in accordance with the process set out in paragraphs 13.2 – 13.6 above will cease to hold office in accordance with the term set out in their original letters of appointment.
- 13.10 An elected governor shall cease to hold office if they cease to be a member of a constituency, area or class.
- 13.11 An appointed governor may hold office for a period of up to 3 years and at the end of this term they shall be eligible for re-appointment for up to two further terms of up to 3 years each (i.e. 9 years in total).
- 13.12 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 13.13 A governor whose tenure of office is terminated shall not be eligible for re-appointment or to stand for re-election for a period of at least one year from the date of removal from office or the date upon which any appeal against their removal from office is disposed of whichever is the later except by resolution carried by a two thirds of the voting members of the Council of Governors.

14. Council of Governors – disqualification and removal

- 14.1 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.2 The following may not become or continue as a member of the Council of Governors:
- 14.2.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.2.2 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;
 - 14.2.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of

imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.

- 14.3 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 4.
- 14.4 Provisions as to the removal of Governors are set out Annex 4 of this Constitution and Annex 9 of the Code of Conduct for Governors.

15. Council of Governors – duties of governors

- 15.1 The general duties of the Council of Governors are –
 - 15.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
 - 15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 15.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.
- 15.3 All governors must comply with the Trust's Code of Conduct for Governors set out in Annex 9.

16. Council of Governors – meetings of governors

- 16.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24.1 or paragraph 25.1 below) or, in their absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 26.1 below), shall preside at meetings of the Council of Governors.
- 16.2 The Council of Governors shall appoint one of the governors, who is a member of the public constituency, to be the Lead Governor for such period, not exceeding the remainder of their term as a governor of the Trust and in accordance with the terms of appointment and role and description set out in Annex 8.
- 16.3 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of any particular meeting. Members of the public shall be excluded from meetings of the Council of Governors only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.
- 16.4 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.

17. Council of Governors – standing orders

- 17.1 The standing orders for the practice and procedure of the Council of Governors as may be amended from time to time are attached at Annex 5.

18. Council of Governors – referral to the Panel

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

18.1.1 to act in accordance with its Constitution; or

18.1.2 to act in accordance with provisions made by or under Chapter 5 of the 2006 Act

- 18.2 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.

19. Council of Governors - conflicts of interest of governors

- 19.1 If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of Governors – travel expenses

- 20.1 Governors shall not receive remuneration for acting as governors but the Trust may pay travelling and other expenses to members of the Council of Governors at rates, and in accordance with a policy, determined by the Trust.

21. Council of Governors – further provisions

- 21.1 Further provisions with respect to the Council of Governors are set out in Annex 4.

22. Board of Directors – composition

- 22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. The composition will be such that there will always be a majority of non-executive directors (including the Chair).
- 22.2 The Board of Directors is to comprise:
 - 22.2.1 a non-executive Chair
 - 22.2.2 at least 8 other non-executive directors, and
 - 22.2.3 up to 8 executive directors.
- 22.3 One of the executive directors shall be the Chief Executive.
- 22.4 The Chief Executive shall be the Accounting Officer.
- 22.5 One of the executive directors shall be the finance director.
- 22.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 22.7 One of the executive directors is to be a registered nurse or a registered midwife.
- 22.8 The directors shall at all times have one vote each save that the Chair shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 22.9 The post of an executive director (excluding the Chief Executive) may be held by more than one eligible person on a job share basis. Where such an agreement is in force then the two individuals may only exercise one vote between them at a meeting of the Board of Directors. In the case of disagreements, they must abstain from voting and no vote may be cast. This must be recorded in the minutes for the Board meeting.

23. Board of Directors – general duty

- 23.1 The general duty of the Board of Directors and of each director individually is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

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

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

24.1.1 he is a member of a public constituency and he is not disqualified by virtue of paragraph 28 below.

25. Board of Directors – appointment and removal of Chair and other non-executive directors

- 25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove (with the approval of three-quarters of the Council of Governors) the Chair of the Trust and the other non-executive directors. The Council of Governors Nomination Committee may identify suitable candidates to fill non-executive director vacancies as they arise and may make written recommendations to the Council of Governors. The Council of Governors shall be required to appoint one non-executive director who exercises functions for Brighton and Sussex Medical School. This candidate will be nominated by Brighton and Sussex Medical School for the Council of Governors Nomination Committee to review and consider and, where appropriate, recommend to the Council of Governors.
- 25.2 The Council of Governors at a general meeting of the Council of Governors shall appoint and, where necessary, remove the Chair of the Trust and the other non-executive directors.
- 25.3 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

26. Board of Directors – appointment of deputy Chair and senior independent director

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy Chair.
- 26.2 The Board shall, following consultation with the Council of Governors, appoint one of the independent non-executive directors as a Senior Independent Director to act in accordance with the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in July 2014 and the Board's Standing Orders.
- 26.3 The offices of Deputy Chair and Senior Independent Director may be held by the same Non-Executive Director.

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

- 27.1 The non-executive directors shall appoint or remove the Chief Executive.

27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

27.3 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

28. Board of Directors – disqualification

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

28.1 A person who fails to meet the requirements of the CQC fit and proper person regulations.

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

28.3 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.

28.4 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.

29. Board of Directors – meetings

29.1 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.

29.2 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.

30. Board of Directors – standing orders

30.1 The standing orders for the practice and procedure of the Board of Directors, as may be amended from time to time, are attached at Annex 6

30.2 The Board of Directors may adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the Trust from time to time.

31. Board of Directors - conflicts of interest of directors

31.1 The duties that a director of the Trust has by virtue of being a director

include in particular –

31.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

31.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

31.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if –

31.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

31.2.2 The matter has been authorised in accordance with the Constitution.

31.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

31.4 In sub-paragraph 31.1.2 “third party” means a person other than –

31.4.1 The Trust, or

31.4.2 A person acting on its behalf

31.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors

31.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

31.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

31.8 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.

31.9 A director need not declare an interest –

31.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest:

31.9.2 If, or to the extent that, the directors are already aware of it:

31.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –

34.9.3.1 by a meeting of the Board of Directors, or

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

31.10 A matter shall be authorised for the purposes of paragraph 31.2.2:

31.10.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

31.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

31.10.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

32. Board of Directors – remuneration and terms of office

32.1 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.

32.2 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.

33. Registers

The Trust shall have:

33.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are areas or classes within it, the area or class to which he belongs;

33.2 a register of members of the Council of Governors;

33.3 a register of interests of governors;

33.4 a register of directors; and

33.5 a register of interests of the directors.

34. Admission to and removal from the registers

34.1 Further provisions as to the registers are set out within Annex 7.

35. Registers – inspection and copies

- 35.1 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 35.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
 - 35.2.1 any member of the Patients' Constituency; or
 - 35.2.2 any other member of the Trust, if he so requests
- 35.3 So far as the registers are required to be made available:
 - 35.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 35.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 35.4 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.

36. Documents available for public inspection

- 36.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 36.1.1 a copy of the current Constitution;
 - 36.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
 - 36.1.3 a copy of the latest annual report.
- 36.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 36.3 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.
- 36.4 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
 - 36.4.1 a copy of any order made under section 65D (appointment of Trust special administrator) 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration), or 65LA (Trusts to be dissolved) of the 2006 Act.

- 36.4.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 36.4.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
- 36.4.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 36.4.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 36.4.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 36.4.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 36.4.8 a copy of any final report published under section 65I (administrator's final report).
- 36.4.9 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.
- 36.4.10a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 36.5 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 36.6 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

37. External Auditor

- 37.1 The Trust shall have an external auditor.
- 37.2 The Council of Governors shall appoint or remove the external auditor at a general meeting of the Council of Governors.
- 37.3 The external auditor shall carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS England (previously Monitor / NSH Improvement) on standards, procedures and techniques to be adopted.

38. Audit committee

- 38.1 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. The membership and terms of reference of the Audit Committee shall be subject to approval by the Board of Directors.

39. Accounts

- 39.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 39.2 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.
- 39.3 The accounts are to be audited by the Trust's external auditor.
- 39.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the of the Secretary of State direct.
- 39.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 40.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.
- 40.2 The Trust shall give information as directed with regards its forward planning in respect of each financial year to NHS Improvement.
- 40.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 40.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 40.5 Each forward plan must include information about –
- 40.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
- 40.5.2 the income it expects to receive from doing so.
- 40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must –
- 40.6.1 determine whether it is satisfied that the carrying on of the

activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

40.6.2 notify the directors of the Trust of its determination.

40.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

41. Presentation of the annual accounts and reports to the governors and members

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

41.1.1 the annual accounts

41.1.2 any report of the auditor on them

41.1.3 the annual report.

41.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

41.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

42. Instruments

42.1 The Trust shall have a seal.

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

42.3 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be executed or signed.

42.4 See further Annex 7 Part C (Custody of Seal and Sealing of Documents).

43. Amendment of the Constitution

43.1 The Trust may make amendments of its Constitution only if –

43.1.1 Over half of the membership of the Council of Governors of the Trust voting approve the amendments, and

43.1.2 Over half of the members of the Board of Directors of the Trust voting approve the amendments.

43.2 Amendments made under paragraph 43.1 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.

43.3 Where an amendment is made to the Constitution in relation to the powers and duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –

43.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

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

43.4 If more than half of the members voting approve the amendment, the amendment continues to have effect, otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

43.5 Amendments by the Trust of its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement'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.

44. Mergers etc. and significant transactions

44.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of over half of the members of the Council of Governors.

44.2 The Trust may enter into a significant transaction only if over half of the members of the Council of Governors voting approve entering into the transaction.

44.3 In this paragraph, the following words have the following meanings:

44.3.1 "Significant transaction" means a transaction which meets any one of the tests below:

the fixed asset test; or

the turnover test;

44.4 The turnover test is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by more than 25%.

44.5 The fixed asset is met if the assets which are the subject of the transaction exceeds 25% of the fixed assets of the Trust.

44.6 A transaction:

44.6.1 includes all agreements (including amendments to agreements) entered into by the Trust

44.6.2 excludes a transaction in the ordinary course of business including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust;

44.6.3 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services;

44.6.4 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

45. Indemnity

45.1 Members of the Board of Directors and Council of Governors 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 of their functions, save where they have acted recklessly.

45.2 The Trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors' and governors' liability to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 45.1, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

ANNEX 1 – CONSTITUENCY DETAILS

THE PUBLIC CONSTITUENCY

Members of the public shall be eligible for membership of the public constituency areas as shown in the table below, which also sets out the minimum numbers required in each area.

| Public Constituency Area | Minimum Membership Per Area |
|--------------------------|-----------------------------|
| Adur | 90 |
| Arun | 220 |
| Brighton & Hove | 100 |
| Chichester | 160 |
| East Sussex | 30 |
| Horsham | 130 |
| Mid Sussex | 35 |
| Worthing | 150 |
| Out of Area | 75 |

THE STAFF CONSTITUENCY

The staff constituency is divided into a number of classes. Trust staff shall be eligible for membership of the class within the staff constituency as shown below.

| Staff Class | Minimum Number of Members Per Class |
|--------------------------------|-------------------------------------|
| Peripatetic | 100 |
| Princess Royal Hospital | 100 |
| Royal Sussex County Hospital | 100 |
| St Richards Hospital | 100 |
| Worthing & Southlands Hospital | 100 |

ANNEX 2 – COMPOSITION OF COUNCIL OF GOVERNORS

Table 1 - Elected Governors

For the period from the Acquisition Date until new governor elections are held and new governors are elected on around August 2021 (**Post Acquisition Elections**) the Elected Governors shall comprise:

| Constituency | Area/Class | Number |
|--|-----------------------------------|-----------|
| Public | Adur | 1 |
| Public | Arun | 1 |
| Public | Brighton & Hove | 0 |
| Public | Chichester | 2 |
| Public | Horsham | 1 |
| Public | Mid Sussex | 0 |
| Public | Worthing | 1 |
| Public | Out of Area | 1 |
| | | |
| Staff | Peripatetic | 1 |
| Staff | Princess Royal Hospital | 0 |
| Staff | Royal Sussex County Hospital | 0 |
| Staff | St Richards Hospital | 1 |
| Staff | Worthing and Southlands Hospitals | 1 |
| Total Number of Elected Governors | | 10 |

Table 2 – Elected Governors

Following the Post Acquisition Elections the Elected Governors shall comprise:

| Constituency | Area/Class | Number |
|--|-----------------------------------|-----------|
| Public | Adur | 1 |
| Public | Arun | 1 |
| Public | Brighton & Hove | 2 |
| Public | Chichester | 2 |
| Public | Horsham | 1 |
| Public | Mid Sussex | 2 |
| Public | Worthing | 1 |
| Public | East Sussex and Out of Area | 1 |
| | | |
| Staff | Peripatetic | 1 |
| Staff | Princess Royal Hospital | 1 |
| Staff | Royal Sussex County Hospital | 1 |
| Staff | St Richards Hospital | 1 |
| Staff | Worthing and Southlands Hospitals | 1 |
| Total Number of Elected Governors | | 16 |

Table 3 - Appointed Governors

| Type | Governor Appointed By: | Number |
|--|---|-----------|
| Local Authority* | Brighton and Hove City Council | 1 |
| | West Sussex County Council | 1 |
| Brighton & Sussex Medical School * | A governor would be appointed by agreement between Brighton & Sussex Universities. | 1 |
| Voluntary Sector | A governor shall be appointed, by agreement of the Council of Voluntary Services | 1 |
| Inclusion | A governor shall be appointed from the three Trust inclusion staff networks covering BAME, LGBT+ and Disability | 1 |
| Total Number of Appointed Governors | | 5 |
| Total Number of Governors | | 21 |

**Note: These Governors must be appointed under paragraphs 9(4) and 9(6) of Schedule 7 of the National Health Service Act 2006 (as amended from time to time).*

In summary, the total number of Governors:

On the Acquisition Date there shall be 10 elected governors plus 5 appointed governors (15 in total) (composed as set out above); and

From on or around August 2021 there shall be 21 Governors (composed as set out above).

Annex 3 - Model Election Rules

MODEL ELECTION RULES 2014

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

The poll

- 27. Eligibility to vote
- 28. Voting by persons who require assistance
- 29. Spoilt ballot papers and spoilt text message votes
- 30. Lost voting information
- 31. Issue of replacement voting information
- 32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 33. Procedure for remote voting by internet
- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

PART 6: COUNTING THE VOTES

- 41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- 44. Rejected ballot papers and rejected text voting records
- 45. Equality of votes

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

- 46. Declaration of result for contested elections
- 47. Declaration of result for uncontested elections

PART 8: DISPOSAL OF DOCUMENTS

- 48. Sealing up of documents relating to the poll
- 49. Delivery of documents
- 50. Forwarding of documents received after close of the poll
- 51. Retention and public inspection of documents
- 52. Application for inspection of certain documents relating to election

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

- 53. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

- 54. Election expenses
- 55. Expenses and payments by candidates
- 56. Expenses incurred by other persons

Publicity

- 57. Publicity about election by the corporation
- 58. Information about candidates for inclusion with voting information
- 59. Meaning of “for the purposes of an election”

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

- 60. Application to question an election

PART 12: MISCELLANEOUS

- 61. Secrecy
- 62. Prohibition of disclosure of vote
- 63. Disqualification
- 64. Delay in postal service through industrial action or unforeseen event

PART 1: INTERPRETATION

1. Interpretation

1.1. In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution;

“*council of governors*” means the council of governors of the corporation;

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

“*election*” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;

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

“*e-voting information*” has the meaning set out in rule 24.2;

“*ID declaration form*” has the meaning set out in Rule 21.1; “*internet voting record*” has the meaning set out in rule 26.4(d);

“*internet voting system*” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (published by Monitor in December 2013) or any later version of such code.

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

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

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act and reference in these Model Election Rules to “*Monitor*” shall be read as reference to its statutory successor, “*NHS Improvement*”;

“*NHS Improvement*” is the operational name for the organisation which consists of (inter alia) Monitor and the NHS Trust Development Authority;

“*numerical voting code*” has the meaning set out in rule 64.2(b)

“polling website” has the meaning set out in rule 26.1;

“postal voting information” has the meaning set out in rule 24.1;

“telephone short code” means a short telephone number used for the purposes of submitting a vote by text message;

“telephone voting facility” has the meaning set out in rule 26.2;

“telephone voting record” has the meaning set out in rule 26.5 (d);

“text message voting facility” has the meaning set out in rule 26.3;

“text voting record” has the meaning set out in rule 26.6 (d);

“the telephone voting system” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

“the text message voting system” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,

“voting information” means postal voting information and/or e-voting information

- 1.2. Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 have the same meaning in these rules as in that Schedule.

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

| Proceeding | Time |
|--|--|
| Publication of notice of election | Not later than the fortieth day before the day of the close of the poll. |
| Final day for delivery of nomination forms to returning officer | Not later than the twenty eighth day before the day of the close of the poll. |
| Publication of statement of nominated candidates | Not later than the twenty seventh day before the day of the close of the poll. |
| Final day for delivery of notices of withdrawals by candidates from election | Not later than twenty fifth day before the day of the close of the poll. |
| Notice of the poll | Not later than the fifteenth day before the day of the close of the poll. |
| Close of the poll | By 5.00pm on the final day of the election. |

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

- 4.1. Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2. Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

- 5.1. Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

- 6.1. The corporation is to pay the returning officer:
 - (a) any expenses incurred by that officer in the exercise of their functions under these rules,
 - (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

- 7.1. The corporation is to co-operate with the returning officer in the exercise of their or her functions under these rules.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1. The returning officer is to publish a notice of the election stating:

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

9.1. Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2. The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
 - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1. The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic

communication), and

- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1. The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,
and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

12.1. The nomination form must include a declaration made by the candidate:

- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of their or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

13.1. The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

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

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

14. Decisions as to the validity of nomination

14.1. Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

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

14.2. The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

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

14.3. The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

14.4. Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

14.5. The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

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

15.2. The statement must show:

- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination form.

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

15.4. The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

16.1. The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2. If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

- 19.1. The votes at the poll must be given by secret ballot.
- 19.2. The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3. The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4. The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5. Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts their vote using the internet voting system;
 - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts their vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts their vote using the text message voting system.

20. The ballot paper

- 20.1. The ballot of each voter (other than a voter who casts their ballot by an e-voting method of polling) is to consist of a ballot paper with the persons

remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2. Every ballot paper must specify:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

20.3. Each ballot paper must have a unique identifier.

20.4. Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies)

21.1. The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of their qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration

form”) or the use of an electronic method.

21.2. The voter must be required to return their declaration of identity with their ballot.

21.3. The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

22.1. The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2. The list is to include, for each member:

- (a) a postal address; and,
- (b) the member’s e-mail address, if this has been provided

to which their voting information may, subject to rule 22.3, be sent.

22.3. The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

23.1. The returning officer is to publish a notice of the poll stating:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined

by the corporation in accordance with rule 19.3,

- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1. Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope,
- (b) the ID declaration form (if required),
- (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
- (d) a covering envelope;
("postal voting information").

24.2. Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast their vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
- (d) contact details of the returning officer,

("e-voting information").

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

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

24.4. If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

24.5. The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

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

25.2. The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

25.3. There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

26.1. If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2. If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose

of voting by the use of a touch-tone telephone (in these rules referred to as “the telephone voting facility”).

26.3. If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the text message voting facility”).

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

- (a) require a voter to:
 - (i) enter their voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
in order to be able to cast their vote;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) (the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter

with confirmation of this; and

- (f) prevent any voter from voting after the close of poll.

26.5. The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (a) require a voter to
 - (i) enter their voter ID number in order to be able to cast their vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote and how to make a declaration of identity,
 - (v) the date and time of the close of the poll, and
 - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

26.6. The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

- (a) require a voter to:

- (i) provide their voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- in order to be able to cast their vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

- 28.1. The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1. If a voter has dealt with their ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2. On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3. The returning officer may not issue a replacement ballot paper for a spoilt

ballot paper unless he or she:

- (a) is satisfied as to the voter's identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4. After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):

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

29.5. If a voter has dealt with their text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.

29.6. On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7. The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.

29.8. After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

30.1. Where a voter has not received their voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2. The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter's identity,

- (b) has no reason to doubt that the voter did not receive the original voting information,
- (c) has ensured that no declaration of identity, if required, has been returned.

30.3. After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):

- (a) the name of the voter
- (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
- (c) the voter ID number of the voter.

31. Issue of replacement voting information

31.1. If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

31.2. After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public and patient constituencies)

32.1. In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

- 33.2. When prompted to do so, the voter will need to enter their voter ID number.
- 33.3. If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4. To cast their vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast their vote.
- 33.5. The voter will not be able to access the internet voting system for an election once their vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1. To cast their vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2. When prompted to do so, the voter will need to enter their voter ID number using the keypad.
- 34.3. If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4. When prompted to do so the voter may then cast their vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5. The voter will not be able to access the telephone voting facility for an election once their vote at that election has been cast.

35. Voting procedure for remote voting by text message

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

votes

36. Receipt of voting documents

36.1. Where the returning officer receives:

- (a) a covering envelope, or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

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

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

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

37. Validity of votes

37.1. A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.

37.2. Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) put the ID declaration form if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

37.3. Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

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

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

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

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (c) place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public and patient constituency)¹

38.1. Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “disqualified”,
- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
- (c) place the ID declaration form in a separate packet.

39. De-duplication of votes

39.1. Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2. If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

voter ID number

39.3. Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4. Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

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

40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

and ensure that complete electronic copies of the internet voting records,

telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

PART 6: COUNTING THE VOTES

41. Interpretation of Part 6

41.1 In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record.

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot document:

(a) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule STV49,

“preference” as used in the following contexts has the meaning assigned below:

(a) *“first preference”* means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) *“next available preference”* means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a *“second preference”* is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule STV46,

“surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“stage of the count” means:

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

“transferable vote” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“transferred vote” means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

41. Arrangements for counting of the votes

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

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

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

42. The count

42.1. The returning officer is to:

- (a) count and record the number of:
 - (i) ballot papers that have been returned; and
 - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

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

42.2. The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

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

shall, subject to rules 44.2 and 44.3, be rejected and not counted.

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

44.3 A ballot paper on which a vote is marked:

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

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

44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

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

44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

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

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

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

- (a) otherwise than by means of a clear mark,
- (b) by more than one mark,

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

44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

- (a) voting for more candidates than the voter is entitled to,
- (b) writing or mark by which voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

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

45. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

46. Declaration of result for contested elections

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

46.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

47 Declaration of result for uncontested elections

47.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

PART 8: DISPOSAL OF DOCUMENTS

48. Sealing up of documents relating to the poll

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

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with “rejected in part”,
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records,

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

48.2. The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoilt ballot papers and the list of spoilt text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

48.3. The returning officer must endorse on each packet a description of:

- (a) its contents,
- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

49. Delivery of documents

49.1. Once the documents relating to the poll have been sealed up and endorsed

pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

50. Forwarding of documents received after close of the poll

50.1. Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

51. Retention and public inspection of documents

51.1. The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

51.2. With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

52. Application for inspection of certain documents relating to an election

52.1. The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or

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

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

52.2. A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

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

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

- (a) in giving its consent, and
- (b) in making the documents available for inspection

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

- (i) that their vote was given, and
- (ii) that Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

53. Countermand or abandonment of poll on death of candidate

53.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

53.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

53.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

53.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

53.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

53.6 The returning officer is to endorse on each packet a description of:

- (a) its contents,

- (b) the date of the publication of notice of the election,
- (c) the name of the corporation to which the election relates, and
- (d) the constituency, or class within a constituency, to which the election relates.

53.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the Chair of the corporation, and rules 57 and 58 are to apply.

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

54. Election expenses

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

55. Expenses and payments by candidates

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

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

56. Election expenses incurred by other persons

56.1. No person may:

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

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

Publicity

57. Publicity about election by the corporation

57.1. The corporation may:

- (a) compile and distribute such information about the candidates, and

- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

57.2. Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

58. Information about candidates for inclusion with voting information

58.1. The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

58.2. The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

59. Meaning of “for the purposes of an election”

59.1. In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

59.2. The provision by any individual of their own services voluntarily, on their

own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

60. Application to question an election

- 60.1. An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 60.2. An application may only be made once the outcome of the election has been declared by the returning officer.
- 60.3. An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 60.4. The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 60.5. The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 60.6. If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 60.7. Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 60.8. The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 60.9. The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

61. Secrecy

61.1. The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

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

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

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

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

62. Prohibition of disclosure of vote

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

63. Disqualification

63.1. A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

64. Delay in postal service through industrial action or unforeseen event

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

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

ANNEX 4 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. INTERPRETATION

- 1.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. APPLICATION OF THESE PROVISIONS

- 2.1 These Provisions apply to all meetings of the Council of Governors (“the **Council**”) and all other relevant activities of the Governors. All Governors are required to abide by these Provisions, which also apply to any persons attending meetings of the Council.
- 2.2 Except where required by law or the Constitution, at any meeting of the Council, the Chair (or in their absence, the Deputy Chair or a person deputising for them) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Governors are made aware of these Provisions, Governors are expected to familiarise themselves with the Provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Provisions by a Governor, another Governor or member of staff identifying such actual/suspected non-compliance shall report it to the Chair or Secretary and the Chair/ Secretary shall be responsible for taking such action as is necessary in accordance with the Code of Conduct for Governors set out in Annex 9 (specifically paragraph 7).

3. APPOINTMENT AND REMOVAL OF GOVERNORS

Election and Appointment to Office

- 3.1 Governors shall be elected or appointed by the means and on terms of office as prescribed by this Constitution.
- 3.2 A Governor shall, within 21 days of election or appointment, sign and deliver to the Secretary a declaration in the form prescribed at Appendix A. No Governor shall be entitled to vote or count in the quorum at a meeting of the Council of Governors until their declaration has been received by the Secretary. Such a declaration shall be valid for the Governor’s term of office.

Removal or Resignation from Office

- 3.3 A person shall not be eligible to become or continue in office as a Governor if:
- 3.3.1 any of the grounds contained in paragraph 14 of the Constitution apply to them; or
 - 3.3.2 in the case of an elected Governor, he ceases to be eligible to be a member of the Trust or constituency. For the avoidance of doubt and in accordance with paragraph 13.3 of the Constitution, a Public Governor who ceases to be eligible to be a member of that Public Constituency by virtue of moving to another

area, shall cease to hold office. Subject to the Provisions set out in this Annex 4 and the Constitutional provisions in respect of eligibility for holding office as a Governor, a person ceasing to hold office by the means described in this clause shall be eligible to stand for election in the area to which he has moved; or

- 3.3.3 he is a member of a Staff Class and any professional registration relevant to their eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months; or
- 3.3.4 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of them or the organisation ceases to exist; or
- 3.3.5 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body; or
- 3.3.6 he is a person whose term of office as the chair or as a member or director of a health service body has been terminated on the grounds that their continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest; or
- 3.3.7 he has had their name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had their name included in such a list; or
- 3.3.8 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act; or
- 3.3.9 has spoken or voted in a meeting on a matter in which they have a direct or indirect pecuniary or non-pecuniary interest and they are judged to have acted so by a majority of not less than three quarters of the Council; or
- 3.3.10 NHS England has exercised its powers to remove them as a Governor 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 NHS England has exercised any of those powers in relation to them on any other occasion whether in relation to the Trust or some other NHS Foundation Trust; or
- 3.3.11 he has received a written warning from the Trust for verbal and/or physical abuse towards any person; or
- 3.3.12 as a member of the public has been the subject to any form of review or investigation that has resulted in an exclusion, or any form of restriction placed on their access to any part of the Trust premises and or its staff;
- 3.3.13 he does not agree to (or, having agreed, fails to) abide by the values as published by the Trust; or
- 3.3.14 he has been placed on the registers of Schedule 1 Offenders

pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and their conviction is not spent under the Rehabilitation of Offenders Act 1974; or

- 3.3.15 he is incapable by reason of mental disorder, illness or injury in managing and administering their property and/or affairs; or
- 3.3.16 he is a member of the UK Parliament; or
- 3.3.17 he is a Director of the Trust or a Governor of another NHS Foundation Trust; or
- 3.3.18 he is a member of a relevant local authority Overview and Scrutiny Committee; or
- 3.3.19 he is not 16 years of age, or older, at the closing date for nominations for election or appointment; or
- 3.3.20 he has contravened any other provision of this Constitution; or
- 3.3.21 their term of office is terminated pursuant to paragraph 3.4 below;

Termination of Office

3.4 A Governor's term of office shall be terminated:

- 3.4.1 by the Governor giving notice in writing to the Secretary of their resignation from office at any time during that term of office;
- 3.4.2 by a majority of the Governors present and voting at a meeting of the Council if any grounds exist under paragraph 3.3 above
- 3.4.3 if the Council resolves to terminate their term of office on the grounds that in the reasonable opinion of over half of the Council of Governors voting at a meeting of the Council convened for that purpose that their continuing as a Governor would or would be likely to:
 - (a) prejudice the ability of the Trust to fulfill its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
 - (c) adversely affect public confidence in the goods and services provided by the Trust;
 - (d) the Governor has declared an interest which through the Council's management of that interest would significantly impact on that Governor's ability to actively deliver the role of a Governor or
 - (e) otherwise bring the Trust into disrepute or be detrimental to

the interests of the Trust.

3.4.4 if over half of the Council of Governors of the Council resolve that:

- (a) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
- (b) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and their continuance in office would not be in the best interests of the Trust; or
- (c) the Governor has failed to or refused to undertake and/or satisfactorily complete any training which the Council has required them to undertake in their capacity as a Governor by a date six months from the date of their election or appointment; or
- (d) They has in their conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, the Constitution, and/or the Trust's Terms of Authorisation; or
- (e) They have committed a material breach of any Role Description or Code of Conduct applicable to Governors of the Trust and/or these Provisions.

3.5 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered them disqualified, and the Secretary shall report the matter to the Council and the Board.

3.6 Upon a Governor resigning or ceasing to be eligible to continue in office that person shall cease to be a Governor and their name shall be removed from the Register of Governors.

Vacancies

3.7 Where a Governor resigns or their office is terminated, elected Governors shall be replaced in accordance with paragraphs 3.8 and 3.9 below and, in the case of appointed Governors, the Trust shall within 30 days of the vacancy having arisen invite the appointing body to appoint a new Governor to hold office for the remainder of the term of office.

3.8 Where a Governor is declared ineligible or disqualified from office or their term of office as a Governor has been terminated (otherwise than as a consequence of their own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chair and Chief Executive of the Trust, who shall use their reasonable endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chair and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.

3.9 Where an elected Governor ceases to hold office during the first six months of their term of office, the Trust shall offer the unsuccessful candidate who

secured the highest number of votes in the last election for the area or class in which the vacancy has arisen, the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate is unwilling, or unable, to fill the vacancy it will then be offered to that unsuccessful candidate who secured the next highest number of votes.

- 3.10 If there is no reserve candidate, or the reserve candidate is unable or unwilling to fill the vacancy, the Council may seek to co-opt a non-voting associate governor from that constituency or agree to allow that office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are public [to be less than half the total membership of the Council. In that event an election will be held in accordance with the election scheme as soon as reasonably practicable.
- 3.11 No defect in the election or appointment of a Governor or any deficiency in the composition of the Council shall affect the validity of any act or decision of the Council.

4. DECLARATIONS AND REGISTER OF GOVERNORS' INTERESTS

- 4.1 In accordance with the Constitution, Governors are required to declare on election or appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 4.2 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 these Provisions and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 4.3 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, he 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 and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 4.4 The term "relevant and material interests" may include (but may not be limited to) the following:
 - 4.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);
 - 4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;
 - 4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;
 - 4.4.4 any connection with an organisation, entity or company considering

entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;

- 4.4.5 research funding/grants that may be received by an individual or their department;
- 4.5 Any traveling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 4.6 Subject to any other provision of this Constitution, a Governor shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:
 - 4.6.1 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
 - 4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
- 4.7 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 4.7.1 of their membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 4.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.
- 4.9 If a Governor has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

- 5.1 Governors shall comply with the terms of the Role Description for Governors which shall be approved by the Council and the Board, and which the Secretary shall issue to Governors upon election or appointment to the Council. The Governors shall also comply with any codes of conduct or other standards referenced in the Role Description.
- 5.2 In the event that there are concerns about a Governor's performance or conduct, the Chair, with the support of the Lead Governor and Secretary where necessary, will address these directly with the Governor concerned. Where necessary, the Chair will make recommendations to the Council, including in respect of any proposal that the Council should remove the Governor from office in which case the Provisions of section 3 of these Provisions shall apply.

5.3 For further information see Annex 9.

6. REMUNERATION AND BUSINESS EXPENSES

- 6.1 Governors shall not receive remuneration.
- 6.2 The Trust is permitted to reimburse traveling expenses to Governors for attendance at meetings of the Council, or for any other business authorised by the Chair as being reasonably within the role and duties of a Governor, at a rate and in accordance with a policy to be determined by the Board of Directors.
- 6.3 Expenses will be reimbursed by the Secretary on receipt of a completed and signed expenses form provided by the Secretary.
- 6.4 A summary of expenses paid to Governors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF COUNCIL OF GOVERNORS

- 7.1 The composition of the Council shall be as set out in Annex 2 of the Constitution.
- 7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Council is defined in its Terms of Reference which shall be approved by the Council and the Board.
- 7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chair shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 7.4 The role of the Deputy Chair shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 7.5 The role of the Lead Governor shall be as defined in a Role Description which shall be approved by the Council and the Board, this is contained within Annex 8.

8. COMMITTEES OF THE COUNCIL

- 8.1 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Council may and, if so required by NHS Improvement, shall appoint committees of the Council consisting wholly or partly of members of the Trust (whether or not they include Governors) or wholly of persons who are not members of the Trust (whether or not they include Governors). The Council shall not delegate any of its powers to a committee but committees may act in an advisory capacity to assist the Council in carrying out its functions.
- 8.2 These Provisions of the Council shall apply with appropriate alteration to any committees established by the Council.
- 8.3 Each such committee or sub-committee shall have such terms of reference. Such terms of reference and the membership of committees or sub-committees shall be subject to approval by the Council.

- 8.4 The Council shall approve the appointment of the Chair and members for each of the committees which it has formally constituted. Where the Council determines that persons who are neither Governors nor staff shall be appointed to a committee, the terms of such appointment shall be determined by the Council. The Council may request that external advisers assist them or any committee they appoint in carrying out its duties.
- 8.5 Elected and Appointed governors may form a sub-committee – the Pre-Council of Governors Committee – to prepare for forthcoming Council meetings.

9. SUSPENSION, AMENDMENT AND REVIEW OF THESE PROVISIONS

Suspension

- 9.1 These Provisions shall not be suspended except:
- 9.1.1 where urgent action is required and the Chair considers it to be in the interests of the Trust to waive one or more of the Provisions, he may do so subject to such action being reported to the next meeting of the Council
 - 9.1.2 at a meeting of the Council, where at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 9.2 Any decision to waive Provisions shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 9.3 These Provisions shall be reviewed one year after approval by the Council and then at least every three years thereafter.
- 9.4 These Provisions shall be amended only if:
- 9.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 9.4.3 at least half of the Governors of the Council, including one staff Governor, one public Governor and one appointed Governor are in favour of amendment.
 - 9.4.4 The proposed amendment(s) has/have been discussed the Board.
- 9.5 All amendments to these Provisions shall be subject to approval through any process prescribed by NHS Improvement.

APPENDIX A

DECLARATION BY GOVERNOR

University Hospitals Sussex NHS FOUNDATION TRUST (the "Trust")

I, (insert full name)

of

.....
.....
.....(insert address)

Hereby declare that I am entitled to:-

(a) be elected to the Council of Governors as a Governor elected by one of the public constituencies/ the staff constituencies* because I am a member of one of the public constituencies/ /staff constituencies *; or

(b) be appointed to the Council of Governors as a governor because I have been appointed by a nominating organisation

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

Signed

Print
Name.....

Date of Declaration

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

1. MEETINGS OF THE COUNCIL OF GOVERNORS

Frequency of Meetings

- 1.1 The Council of Governors (“the Council”) shall decide the frequency of and calendar for its meetings, subject to the Council holding a minimum of four general meetings per year. The Secretary shall ensure that within the meeting cycle of the Council, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 1.2 Notwithstanding clause 1.1 above, the Chair may at any time call a meeting of the Council. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Governors including at least two elected and two appointed Governors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Governors may forthwith agree to call a meeting of the Council.

Admission of the Public

- 1.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Council unless the Council decides otherwise in relation to all or part of any particular meeting. The public shall be excluded from meetings of the Council only where the business under discussion is commercially sensitive or is otherwise considered to be confidential.
- 1.4 The Chair may exclude any member of the public from a meeting of the Council if the person is interfering with or preventing the proper conduct of the Council's business. The Chair's decision in this respect shall be final.
- 1.5 The Chair shall decide the arrangements through which any questions from members of the public will be asked and answered.

Admission of Directors

- 1.6 Subject to Provisions in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council and, subject to the decision of the Chair, to speak to any item under consideration.

Chair for Meetings of the Council

- 1.7 Subject to clause 1.9 below, the Chair of the Trust, or in their absence, the Deputy Chair shall preside at meetings of the Council. Neither the Chair nor any person deputising for them shall be a member of the Council and he shall not have a vote on matters considered by the Council.
- 1.8 The Deputy Chair may preside at meetings of the Council in the following circumstances:
 - 1.8.1 when there is a need for someone to have the authority to chair any

meeting of the Council when the Chair is not present

- 1.8.2 when the remuneration, allowance and other terms and conditions of the Chair are being considered.
 - 1.8.3 when the appointment of the Chair is being considered, should the current Chair be a candidate for re-appointment.
 - 1.8.4 on occasions when the Chair declares a pecuniary interest that prevents them from taking part in the consideration or discussion of a matter before the Council.
- 1.9 If it would not be appropriate for the Chair or the Deputy Chair to preside, one of the other Non-Executive Directors shall preside. If in exceptional circumstances it would not be appropriate for any Non-Executive Director to preside, the Council shall appoint one of its members to preside at that meeting. This shall normally be the Lead Governor.
- 1.10 Statements made by Governors at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 1.11 Before each meeting of the Council, a notice of the meeting agreed by the Chair or by an officer of the Trust authorised by the Chair to approve on their behalf shall be published on the Trust website no less than five clear days in advance of the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 1.12 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Governors at least five clear days written notice of the date and place of every meeting of the Council. Written notice shall be deemed to include communication by email. The notice shall be published on the Trust's website and otherwise made available to members of the public as considered appropriate by the Trust.
- 1.13 In the case of a meeting called by the Governors in default of the Chair, the notice shall be signed by those respective Governors and no business shall be transacted at the meeting other than that specified in the notice. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission. Lack of service of the notice on any Governors shall not affect the validity of a meeting.

Agenda and Notification of Business

- 1.14 At the direction of the Council, the Secretary shall draw up and maintain an agenda plan for the Council's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Council, which it will agree with the Board of Directors ("the Board"). The agenda plan shall be approved by the Council at least once in each calendar year.

- 1.15 The Council may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.

- 1.16 A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chair or the Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chair.

- 1.17 Before each meeting of the Council, an agenda setting out the business of the meeting, approved by the Chair or by an officer of the Trust authorised by the Chair on their behalf agreed by the Lead shall be posted online or delivered electronically to the membership of the Council of Governors, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Council has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Governors and approved by the Chair. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 1.18 The Secretary shall be responsible for compiling and distributing to Governors (and, where their attendance is permitted, members of the public) papers for meetings of the Council. Papers shall be issued at least five clear days prior to each meeting of the Council. Papers will only be tabled at the Council's meetings in exceptional circumstances and then only with the prior approval of the Chair.

Quorum for Meetings

- 1.19 A meeting of the Council shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that the following requirements are all satisfied:

- 1.19.1 there shall be present at the meeting at least one third of all Governors

- 1.19.2 of those present, at least 51% shall be elected Governors

A Governor shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Governors present at the meeting.

If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chair.

- 1.20 If a Governor has declared a direct pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.
- 1.21 Where a Governor:
- 1.21.1 has declared 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
 - 1.21.2 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
 - 1.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;
 - 1.21.4 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 disclose their interest.
- 1.22. A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting.
- 1.23 The minutes shall record any declarations of interests on the part of Governors and any action taken in respect of them.

Conduct of Business

- 1.24 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chair so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the Chair shall have a casting vote.
- 1.25 All questions put to the vote shall, at the discretion of the person presiding, 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.
- 1.26 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.

- 1.27 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 1.28 In no circumstances may an absent Governor vote by proxy.

Minutes of Meetings

- 1.29 The minutes of the meeting, which shall include the names of the Governors present, shall be drawn up and submitted by Secretary for the Council's approval at its next meeting. Subject to the Chair's approval, the minutes may be circulated in draft form to Governors prior to the Council's next meeting and made available to the public (including through the Trust's website).
- 1.30 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chair considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 1.31 Where the Council so decides in respect of any matter or, where it is necessary, at the discretion of the Chair, the Council may take decisions by means of a written resolution.
- 1.32 A resolution in writing sent to all Governors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Council duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Governor.

2. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 2.1 These Standing Orders shall not be suspended except:
 - 2.1.1 where urgent action is required and the Chair considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Council
 - 2.1.2 at a meeting of the Council, at least half of the total number of Governors are present, such number to include not less than one third of the Public Governors, not less than one third of the Staff Governors and not less than one third of the Appointed Governors
- 2.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council and shall be reported to the Audit Committee.

Amendment and Review

- 2.3 These Standing Orders shall be reviewed one year after approval by the Council and then at least annually thereafter.
- 2.4 These Standing Orders shall be amended only if:
 - 2.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 2.4.3 at least three quarters of the Governors present and voting at a meeting of the Council, including one Staff Governor, one Public Governor and one Appointed Governor are in favour of amendment.
 - 2.4.4 The proposed amendment(s) has/have been discussed the Board.
- 2.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

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

1. INTERPRETATION

- 1.1 In these Standing Orders, the provisions relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. APPLICATION OF STANDING ORDERS

- 2.1 These Standing Orders apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Standing Orders, which also apply to any persons attending meetings of the Board.
- 2.2 Except where required by law or the Constitution, at any meeting of the Board, the Chair (or in their absence, the Deputy Chair) shall be the final authority on the interpretation of these Standing Orders (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Standing Orders, Directors are expected to familiarise themselves with the provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Standing Orders by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chair or Secretary and the Chair/ Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. MEETINGS OF THE BOARD OF DIRECTORS

Frequency of Meetings

- 3.1 The Board shall decide the frequency of and calendar for its meetings, subject to the Board holding not less than four per year. The Secretary shall ensure that within the meeting cycle of the Board, meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 3.2 Notwithstanding clause 3.1 above, the Chair may at any time call a meeting of the Board. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the total number of Directors, has been presented to them, or if, without so refusing, the Chair does not call a meeting within 7 days after such requisition has been presented to him/her, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting of the Board.

Admission of the Public and Observers

- 3.3 By effect of these Standing Orders only, the public shall be invited to attend all meetings of the Board unless the Board decides otherwise in relation to all or part of any particular meeting. The Board may also invite observers to attend its meetings.
- 3.4 The public shall be excluded from meetings of the Board only where the business under discussion is commercially sensitive or is otherwise considered to be confidential. The Chair may exclude any member of the public from a meeting of the Board if the person is interfering with or preventing the proper conduct of the Board's business. The Chair's decision in this respect shall be final.
- 3.5 The Chair shall decide the arrangements through which any questions from members of the public will be asked and answered.

Chair for Meetings of the Board

- 3.6 The Chair of the Trust, or in their absence, the Deputy Chair shall preside at meetings of the Board.
- 3.7 The Deputy Chair may preside at meetings of the Board in the following circumstances:
- 3.7.1 when there is a need for someone to have the authority to chair any meeting of the Board when the Chair is not present;
 - 3.7.2 on occasions when the Chair declares a pecuniary interest that prevents them from taking part in the consideration or discussion of a matter before the Board.
- 3.8 If it would not be appropriate for the Chair or the Deputy Chair to preside, then the remaining Non-Executive Directors shall choose one of the other Non-Executive Directors to preside.
- 3.9 Statements made by Directors at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final and shall be observed at the meeting.

Notice, Agenda and Papers for Meetings

Notice of Meeting

- 3.10 Before each meeting of the Board, a notice of the meeting 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 member of the Board, or sent by post to the usual place of residence of such Director, no less than five clear working days before the meeting. Clear days shall not include the date on which the notice is sent or the day of the meeting.
- 3.11 Except in the case of emergencies or in case of a need to conduct urgent business, the Secretary shall give to all Directors at least 10 clear working days' written notice of the date and place of every meeting of the Board.

Written notice shall be deemed to include communication by email. Notice will also be published on the Trust's website.

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

Agenda and Notification of Business

- 3.13 At the direction of the Board, the Secretary shall draw up and maintain a plan for the agenda of the Board's meetings in each calendar year. The agenda plan shall take account of the work-plan for the Board, which it will agree with the Council. The agenda plan shall be approved by the Board at least once in each calendar year.
- 3.14 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 3.15 A Director desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chair or the Secretary at least three clear business days before notice of the meeting is given. Requests made less than three days before the notice is given may be included on the agenda at the discretion of the Chair.
- 3.16 Before each meeting of the Board, an agenda setting out the business of the meeting, approved by the Chair or by an officer of the Trust authorised by the Chair on their behalf shall be delivered electronically to every member of the Board, specifying the business proposed to be transacted at it at least five clear days before the meeting. The agenda shall include any items of business identified in the approved agenda plan, any items which the Board has directed to appear on any or all of the agenda for its meetings and any specific items or motions requested by one or more Directors and approved by the Chair. The agenda shall be published on the Trust's website prior to the meeting and otherwise made available to members of the public as considered appropriate by the Trust.

Papers for Meetings

- 3.17 The Secretary shall be responsible for compiling and distributing to Directors (and, where their attendance is permitted, members of the public) papers for meetings of the Board. Papers shall be issued at least five clear days prior to each meeting of the Board. Papers will only be tabled at the Board's meetings in exceptional circumstances and then only with the prior approval of the Chair.

Quorum for Meetings

- 3.18 A meeting of the Board shall be quorate and shall not commence until it is quorate. Quoracy is defined as meaning that at least half of the Board must be present, including two Non-executive Directors and two Executive Directors. A Director shall be deemed as present if he joins the meeting by telephone or other means, provided that he can hear and be heard by all other Directors present at the meeting.
- 3.19 If the meeting is not quorate within 15 minutes after the due starting time, it shall be reconvened at time to be agreed by the Chair.

Declaring interests

- 3.20 If a Director has declared a direct pecuniary interest in any matter, the Director must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting.
- 3.21 Where a Director:
- 3.21.1 has declared 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
 - 3.21.2 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
 - 3.21.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;
 - 3.21.4 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 disclose their interest.
- 3.22 A Director who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Director will count towards the quorum of the meeting.
- 3.23 The minutes shall record any declarations of interests on the part of Directors and any action taken in respect of them.
- 3.24 See further paragraph 4 (declarations and register of directors' interests) of Annex 7 (further provisions).

Conduct of Business

- 3.25 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chair so determines or if a Director requests, a question at a meeting shall be

determined by a majority of the votes of the Director present and voting on the question and, in the case of any equality of votes, the Chair shall have a casting vote.

- 3.26 All questions put to the vote shall, at the discretion of the person presiding, 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.
- 3.27 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.28 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).

3.29 An officer who has been formally appointed to act 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, and shall therefore count towards the quorum. An officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence in the absence of a formal acting arrangement (i.e. a proxy) shall not exercise the voting rights of the Executive Director or count towards the quorum. The minutes shall record the status of Directors attending to represent Executive Directors.

- 3.30 For the avoidance of doubt, in no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

Minutes of Meetings

- 3.31 The minutes of the meeting, which shall include the names of the Directors present, shall be drawn up and submitted by Secretary for the Board's approval at its next meeting. Subject to the Chair's approval, the minutes may be circulated in draft form to Directors prior to the Board's next meeting and made available to the public (including through the Trust's website).
- 3.32 No discussion shall take place upon the draft minutes except upon their accuracy or where the Chair considers discussion appropriate (for example, on matters arising). Any amendment to the draft minutes of the previous meeting shall be recorded in the minutes of the present meeting. Once draft minutes have been approved (including with regard to any amendments made), they shall be deemed ratified and signed by the person who presided at the meeting at which their accuracy was discussed.

Written Resolutions

- 3.33 Where the Board so decides in respect of any matter or, where it is necessary, at the discretion of the Chair, the Board may take decisions by means of a written resolution.
- 3.34 A resolution in writing sent to all Directors and signed by at least 75% of them shall be as valid and effective as if it had been passed at a meeting of the Board duly convened and held. Such a resolution may consist of several documents in the same form, each signed by one or more of the Directors.

4. SUSPENSION, AMENDMENT AND REVIEW OF THESE STANDING ORDERS

Suspension

- 4.1 These Standing Orders shall not be suspended except:
 - 4.1.1 where urgent action is required and the Chair considers it to be in the interests of the Trust to waive one or more of the Standing Orders, he may do so subject to such action being reported to the next meeting of the Board
 - 4.1.2 at a meeting of the Board, at least half of the total number of Directors are present, such number to include at least one Non-executive Director
- 4.2 Any decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Board and shall be reported to the Audit Committee.

Amendment and Review

- 4.3 These Standing Orders shall be reviewed one year after approval by the Board and then at least annually thereafter.
- 4.4 These Standing Orders shall be amended only if:
 - 4.4.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
 - 4.4.3 at least three quarters of the Board present and voting at a meeting of the Board are in favour of amendment.
 - 4.4.4 The proposed amendment(s) has/have been discussed with the Council.
- 4.5 All amendments to these Standing Orders shall be subject to approval through any process prescribed by NHS Improvement.

ANNEX 7 – FURTHER PROVISIONS RELATING TO THE BOARD OF DIRECTORS

1. INTERPRETATION

- 1.1 In these Provisions, the clauses relating to Interpretation and definitions in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

PART A – PROVISIONS RELATING TO THE BOARD OF DIRECTORS

2. APPLICATION OF PROVISIONS

- 2.1 These Provisions apply to all meetings of the Board of Directors (“the Board”) and all other relevant activities of the Directors. All Directors are required to abide by these Provisions, which also apply to any persons attending meetings of the Board.
- 2.2 Except where required by law or the Constitution, at any meeting of the Board, the Chair (or in their absence, the Deputy Chair) shall be the final authority on the interpretation of these Provisions (on which he should be advised by the Chief Executive and the Secretary).
- 2.3 Whilst the Secretary shall be responsible for ensuring that Directors are made aware of these Provisions, Directors are expected to familiarise themselves with the provisions.
- 2.4 In the event of any actual or suspected non-compliance with these Provisions by a Director, the person identifying such actual/ suspected non-compliance shall report it to the Chair or Secretary and the Chair or Secretary shall be responsible for taking such action as is necessary, which shall, where non-compliance is identified, include a report to the next scheduled meeting of the Board. Such a report shall be recorded in the minutes of the Board meeting.

3. APPOINTMENT AND REMOVAL OF DIRECTORS

The provisions of this Section 3 shall be subject always to paragraphs 21 to 31 (inclusive) of the Constitution.

Chief Executive

- 3.1 There shall be a Nominations & Remuneration Committee of the Board which shall be responsible for appointing the Chief Executive. When the Committee is considering the appointment of the Chief Executive, it shall comprise of the Chair and as many of the Non-Executive Directors as the Board decides. The Committee shall make a recommendation to the Chair and the other Non-Executive Directors, and their decision shall be subject to approval by the Council.

Executive Directors

- 3.2 The Board shall establish a Committee to appoint the Executive Directors. The

Committee shall comprise of the Chair, the Non-Executive Directors and the Chief Executive. The Committee's decision shall be final.

Terms of Office and Process

- 3.3 There shall be written policies and processes, approved by the Board, to set out the process by which the Chair, Non-Executive Directors, Chief Executive and Executive Directors shall be appointed, and through which their terms and conditions of appointment shall be decided. In the case of the appointment of the Chair, Non-Executive Directors and the Chief Executive, these policies and processes shall be subject to the approval of the Council.
- 3.4 Save for the initial Chair and initial Non-Executive Directors who shall be appointed for a term in accordance with their letters of appointment, the Chair and the Non-Executive Directors appointed after the Acquisition Date shall be appointed for a term of three years. Subject to other relevant provisions in the Constitution, Non-Executive Directors shall be subject to re-appointment thereafter at intervals of no more than 3 years. Non-executive Directors may serve for a term beyond 6 years subject to annual re-appointment. Non-Executive Directors may not serve for a term of more than nine years in aggregate.

Appointments – Other Matters

- 3.5 No defect in the appointment of a Director nor any deficiency in the composition of the Board shall affect the validity of any act or decision of the Board.
- 3.6 The Trust may confer on a person the title “Director” as an indication of their seniority and/or the corporate nature of their responsibilities within the Trust but such a person shall not be an Executive Director or Non-Executive Director of the Trust for the purposes of the 2006 Act unless he is a member of the Board of Directors as defined by the Constitution and, therefore, subject to Section 3.29 of Annex 6, he will have no right to vote at meetings of the Board.

Removal or Resignation from Office

- 3.7 A person shall not be eligible to become or continue in office as a Director if:
 - 3.7.1 in respect of a Non-Executive Director, he does not meet the criteria for eligibility in paragraph 24 of the Constitution;
 - 3.7.2 in respect of any Director, any of the grounds contained in paragraph 28 apply to them;
 - 3.7.3 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
 - 3.7.4 he has had their name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had their name included in such a list;

- 3.7.5 NHS England has exercised its powers to remove them as a Director of the Trust or has suspended them from office or has disqualified them from holding office as a Director of the Trust for a specified period or NHS England has exercised any of those powers in relation to them on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 3.7.6 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and their conviction is not spent under the Rehabilitation of Offenders Act 1974;
- 3.7.7 he is incapable by reason of mental disorder, illness or injury in managing and administering their property and/or affairs;
- 3.7.8 he is a Governor of the Trust or a director of another NHS Foundation Trust;

Termination of Tenure

- 3.8 A Director's term of office shall be terminated:
 - 3.8.1 if he is a Non-Executive Director if he gives notice in writing to the Secretary of their resignation from office at any time during that term of office or under paragraph 25.2 of the Constitution;
 - 3.8.2 if he is an Executive Director if he gives notice in writing to the Chief Executive of their resignation from office at any time or under paragraph 27.3 of the Constitution.
- 3.9 Where a person has been appointed to the Board and he becomes disqualified from that appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 calendar days of first becoming aware of those matters which rendered them disqualified.
- 3.10 A Director whose tenure of office is terminated shall not be eligible for re-appointment for a period of three 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 the later except by resolution carried by a majority of the Board present and voting at a meeting.
- 3.11 Upon a Director resigning or ceasing to be eligible to continue in office that person shall cease to be a Director and their name shall be removed from the Register of Directors.

Vacancies

- 3.12 Where a Director resigns or their office is terminated, the vacancy shall be filled through the processes agreed as set out in Section 3.4 above.

4. DECLARATIONS AND REGISTER OF DIRECTORS' INTERESTS

- 4.1 In accordance with the Constitution, Directors are required to declare on appointment and in the manner prescribed below any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust.
- 4.2 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 these Provisions and delivering it to the Secretary within 28 days of a Director's appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within one month.
- 4.3 If a Director is present at a meeting of the Board and has an interest of any sort in any matter which is the subject of consideration, he 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 and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter.
- 4.4 The term "relevant and material interests" may include (but may not be limited to) the following:
 - 4.4.1 directorships, including non-executive directorships held in private or public limited companies (with the exception of those of dormant companies);
 - 4.4.2 ownership or part-ownership or directorships of companies or other types of organisation which are likely to or are seeking to do business with the NHS;
 - 4.4.3 a position of authority in a charity or voluntary organisation operating in the field of health and social care, including any which are contracting for or are commissioning NHS services;
 - 4.4.4 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
 - 4.4.5 research funding/grants that may be received by an individual or their department;
- 4.5 Any traveling or other expenses or allowances payable to a Director in accordance with this Constitution shall not be treated as a pecuniary interest.
- 4.6 Subject to any other provision of this Constitution, a Director shall be treated as having an indirect pecuniary interest in a contract, proposed contract or other matter, if:
 - 4.6.1 he, or a nominee of their, 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

- 4.6.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
- 4.7 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 4.7.1 of their membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 4.7.2 of an interest in any company, body, or person with which he is connected, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 4.8 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Provisions to be also an interest of the other.
- 4.9 If a Director has any doubt about the relevance of an interest, he must take advice from the Secretary.

5. STANDARDS OF CONDUCT

- 5.1 Subject to the 2006 Act (as amended and/or replaced from time to time), Directors shall comply with the terms of their relevant Role Descriptions which shall be approved by the Board and, as set out in these Provisions, the Council, and which the Secretary shall issue to Directors upon appointment to the Board. The Directors shall comply with any codes of conduct or other standards referenced in their Role Descriptions.
- 5.2 In the event that there are concerns about a Non-Executive Director's performance or conduct, the Chair, with the support of the Secretary where necessary, will address these directly with the Non-Executive Director concerned. Where necessary, the Chair will make recommendations to the Board, including in respect of any proposal that the Board should remove the Non-Executive Director from office in which case the provisions of Section 3 of these Provisions shall apply.
- 5.3 In the event that there are concerns about an Executive Director's performance or conduct, the Chief Executive, with the support of the Secretary and others where necessary, will address these directly with the Executive Director concerned. Where necessary, the Chief Executive will make recommendations and/or reports to the Board, including in respect of any proposal that the Board should remove the Executive Director from office in which case the provisions of Section 3 of this Annex 7 shall apply.

6. REMUNERATION AND BUSINESS EXPENSES

- 6.1 The Trust is permitted to reimburse traveling expenses to Non-Executive Directors for attendance at meetings of the Board, or for any other business authorised by the Chair as being reasonably within the role and duties of a Non-Executive Director, at a rate to be determined by the Council of Governors. The Chief Executive shall be responsible for authorising expenses incurred by Executive Directors, to be paid at a rate to be determined by the Chair and Non-

Executive Directors.

- 6.2 A summary of expenses paid to Directors will be published in the Annual Report.

7. COMPOSITION AND ROLE OF BOARD OF DIRECTORS

- 7.1 All of the Board's business shall be conducted in the name of the Trust.
- 7.2 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Board is defined in its Terms of Reference which shall be approved by the Board of Governors and the Board of Directors.
- 7.3 Subject to the 2006 Act (as amended and/or replaced from time to time), the composition of the Board shall be as set out in the Constitution.
- 7.4 Subject to the 2006 Act (as amended and/or replaced from time to time), the role of the Chair and the role of Non-Executive Director shall be as defined in Role Descriptions which shall be approved by the Council and the Board.
- 7.5 The Council shall appoint one of the Non-Executive Directors to be Deputy Chair. The role of the Deputy Chair shall be as defined in a Role Description which shall be approved by the Council and the Board.
- 7.6 The Board shall appoint one of the Non-Executive Directors to be the Senior Independent Director ("SID"). The role of Senior Independent Director shall be as defined in the Role Description which shall be approved by the Board.

8. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 8.1 Subject to the Constitution, Terms of Authorisation or any relevant statutory provision, the Board may make arrangements for the delegation, on behalf of the Board, of any of its powers to a committee of directors or to an executive director.
- 8.2 The Board shall delegate responsibility and authority on any terms which it considers to be appropriate, such terms to be defined in written terms of reference approved by the Board.
- 8.3 The Board's arrangements for the exercise of functions through delegation shall be set out within a Scheme of Delegation to be approved by the Board. This shall include delegation to Committees and to Directors, and shall specify those matters which are reserved to the Board to decide.

9. COMMITTEES OF THE BOARD

- 9.1 Subject to the 2006 Act (as amended and/or replaced from time to time), the Board shall establish an Audit Committee and a Nominations & Remuneration Committee, whose role, responsibilities and authority shall be defined in terms of reference to be approved by the Board in accordance with

- 9.2 paragraphs 32 and 38 of the Constitution. The Board shall appoint the Chairmen and the Members of the Committees.
- 9.3 Subject to the Constitution, the Terms of Authorisation and such binding guidance as may be given by NHS Improvement, the Board may and, if so required by NHS Improvement, shall appoint other committees of the Board consisting wholly or partly of Directors or wholly of persons who are not Directors. The Board shall not delegate any of its powers to such committees but committees may act in an advisory capacity to assist the Board in carrying out its functions.
- 9.4 These Provisions of the Board shall as far as they are applicable apply with appropriate alteration to any committees established by the Board.

10. PROFESSIONAL ADVICE

- 10.1 The Board shall have direct access to any independent advice which it considers necessary for the proper discharge of its functions, such advice normally being obtained by the Secretary. Such advice shall be commissioned through terms of reference to be agreed by the Board and may be presented in written form and/or by advisors attending meetings of the Board. The Trust shall meet the cost of any such advice commissioned by the Board. The Board shall establish a policy to set out the circumstances in which and the arrangements through which advice shall be taken and reported to the Board.

11. DIRECTORS AND GOVERNORS: WORKING ARRANGEMENTS

Engagement, Collaboration and Consultation

- 11.1 The Board and the Council shall agree work-plans for their meetings and activities, which shall be complementary and integrated. The work-plans shall identify the matters on which and, where possible, the timetable over which the Board and the Council shall consult each other about the business which they deal with. The work-plans shall take account of the Trust's strategy and business plans.
- 11.2 As a minimum, the Board shall consult the Council on the following matters:
- 11.2.1 proposals for the Trust's strategy and its annual Business Plan;
 - 11.2.2 proposals for significant service developments;
 - 11.2.3 the Trust's operational performance and delivery against plans generally;
 - 11.2.4 service reviews and evaluations in respect of the Trust's services; and
 - 11.2.5 development of the Trust's membership and plans for engagement with patients and the public generally.
- 11.3 The Board shall present to the Council the Trust's Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.

- 11.4 The Board and the Council shall hold at least one joint meeting per year.
- 11.5 Directors and Governors may agree to attend each other's' meetings through a schedule to be agreed by the Board and the Council.

Informal Communication

- 11.6 The Chair shall use their reasonable endeavours to promote communication between the Board and the Council, including through:
 - 11.6.1 participation of the Board in the induction, orientation and training of Governors;
 - 11.6.2 development of special interest relationships between Non-Executive Directors and Governors;
 - 11.6.3 discussions between Governors and the Chair and/or the Chief Executive and/or Directors through the office of the Chief Executive or their nominated officer;
 - 11.6.4 involvement in membership recruitment and briefings at events organised by the Trust.

Formal Communication

- 11.7 Where it is otherwise necessary, such as where it is prescribed by the Constitution, these Provisions, Terms of Authorisation or elsewhere, the Board and the Council shall communicate formally by the means set out below:
 - 11.7.1 the Council may and, where required, shall at any time ask for matters to be referred to the Board. Any such referrals shall be made through the Chair who shall arrange for the matter to be added to the agenda for the next scheduled meeting of the Board;
 - 11.7.2 in the absence of the Council agreeing to refer a matter to the Board, any Governor may through the Chair refer a matter to the Board of Directors but if the Chair declines to refer any such issue the said Governor may refer it provided that two thirds of the Governors present approve their request to do so. The Chair shall then refer the matter to the Board and provide the response to the Council.

12. RESOLUTION OF DISPUTES

- 12.1 In the event of dispute between the Council and the Board then the dispute resolution procedure set out below shall be followed in order to resolve the matters concerned. The Council and the Board shall at all times recognise their roles and responsibilities as defined in the Constitution, these Provisions, Terms of Reference and any other documents approved.
- 12.2 The Chair or, in the event that the dispute is about the conduct or performance of the Chair, the Senior Independent Director, shall endeavour through discussion with Governors and Directors or, if it is

considered to be more expedient, appointed representatives of them, to resolve the matter to the reasonable satisfaction of both parties.

- 12.3 In the event that it is not possible to resolve the dispute through the process described in 12.2 above, the Chair or, in the event that the dispute is about the conduct or performance of the Chair, the Senior Independent Director, shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to clearly and concisely produce a recommendation statement to the Council and to the Board with a view to resolving the dispute (the "Recommendation Statement").
- 12.4 The Chair or, in the event that the dispute is about the conduct or performance of the Chair, the Senior Independent Director, shall ensure that the Recommendation Statement, without amendment or abbreviation in any way, shall be considered at the next scheduled meeting of both the Council and the Board. Where it is considered necessary or expedient to convene a meeting of the Council or of the Board earlier than is otherwise scheduled then the Chair shall do so and in this event the relevant provisions of these Provisions shall apply.
- 12.5 If in the opinion of the Chair or, in the event that the dispute is about the conduct or performance of the Chair, the Senior Independent Director, and following the further discussions prescribed in 12.4 there is no further prospect of a full resolution or, if at any stage in the process, in the opinion of the Chair or the Senior Independent Director (as the case may be) there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly. In the event that the dispute cannot be resolved, the decisions of the Board shall prevail. In the event that the dispute is resolved to the satisfaction of the Council and the Board, the Board shall implement the decisions taken.
- 12.6 Nothing in this procedure shall prevent the Council, through the Lead Governor, from informing NHS England that in the Council's reasonable opinion its concerns are such that if they remain unresolved, the Trust will be at risk of breaching the terms of its Authorisation.

PART B – MEMBERSHIP OF THE TRUST

13. ELIGIBILITY FOR MEMBERSHIP

General

- 13.1 An individual shall not be eligible for membership of the Trust if he:
- 13.1.1 fails or ceases to fulfill the criteria for membership of any of the constituencies;
 - 13.1.2 was formerly employed by the Trust or any health service body and in the preceding two years was lawfully dismissed other than by reason of redundancy;
 - 13.1.3 has been involved as a perpetrator in a serious incident of violence or abuse, or has been excluded from the Trust's premises in any other capacity, in the last five years at any of the Trust's hospitals or against any of the Trust's Governors, Directors, staff members or patients;
 - 13.1.4 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and their or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 13.1.5 does not agree to abide by the Trust values as published by the Trust;
 - 13.1.6 has been identified as a vexatious complainant or has been excluded from treatment at any of the Trust's hospitals due to unacceptable behaviour;
 - 13.1.7 is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust; or
 - 13.1.8 is under the age of sixteen years.
- 13.2 It is the responsibility of members to ensure that they are eligible for membership but if the Trust is on notice that a member may be disqualified from membership, the Trust shall carry out all reasonable enquiries to establish whether or not this is the case.
- 13.3 Where an individual is held by the Trust to be ineligible and/or disqualified from membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Secretary (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

13.4 The Secretary (or their nominated representative) shall:

- (a) review the decision having regard to any representations made by the individual concerned and such other material, if any, as the Secretary considers appropriate;
- (b) either confirm the decision or make some other decision as appropriate based on the evidence which he has considered; and
- (c) communicate their decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

13.5 If the member is aggrieved of the decision of the Secretary he may appeal in writing to the Council of Governors ("the Council") within 14 days of the Secretary's decision. The Council shall consider the matter at its next meeting and its decision shall be final

Public Membership

13.6 For the purposes of determining whether an individual lives in a public constituency, an individual shall be deemed to do so if;

13.6.1 their name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or

13.6.2 the Trust is otherwise satisfied that the individual lives within the said area.

Staff Membership

13.7 An individual shall be deemed to be eligible for membership of the staff constituency if he meets the eligibility criteria set out in the Constitution.

14. APPLICATION FOR MEMBERSHIP

14.1 Where a person wishes to apply to become a member of the Trust, the following procedure shall apply

14.1.1 the Trust shall upon request supply them with a form of application for membership in a form determined by the Trust;

14.1.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;

14.1.3 unless the applicant is ineligible for membership or is disqualified from membership, the Trust shall cause their name to be entered on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;

14.1.4 upon the applicant's name being entered on the Trust's Register of Members he shall become a member;

14.1.5 the information to be included in the Trust's Register of Members shall include the following details relating to that member:

- (a) their full name and title;
- (b) their date of birth;
- (c) their full postal address;
- (d) their home telephone number (if any);
- (e) their email address (if any);
- (f) the constituency and, where relevant, the area or class of which he/she is a member;
- (g) the date upon which he/she became a member; and
- (h) their gender and ethnicity.

14.2 For the avoidance of doubt and subject to the restrictions on making the Trust's registers available in accordance with paragraph 35.2 of the Constitution, where a member of the public makes a request to inspect the Register of Members, pursuant to paragraph 35 of the Constitution (Registers – inspection of copies), the Trust shall disclose only those parts of the Register that detail the members' names, constituency, and, where relevant, their area or class within that constituency in accordance with paragraph 20 and paragraph 22(3) of Schedule 7 of the 2006 Act and subject always to compliance with data protection requirements.

15. REGISTER OF MEMBERS

15.1 For the avoidance of doubt, an individual shall become a member on the date upon which their name is entered on the Trust's Register of Members and shall cease to be a member upon the date on which their name is removed from the Register of Members as provided for in this Constitution.

15.2 The Register of Members and all other Registers shall be maintained in accordance with this Constitution and in accordance with the 2006 Act. The Registers shall be reviewed and updated regularly and, in the case of the Register of Members, within 14 days of receipt of any new or amended information about members.

15.3 Where in the reasonable opinion of the Trust a member is no longer eligible or is disqualified from Membership of the Trust, the Trust shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the member addressed to them at the address given in the Register of Members of its intention to remove them from the Register and that member has not within that period notified the Trust of their wish to continue as member and provided proof satisfactorily to the Trust of their continued eligibility.

16. TERMINATION OF MEMBERSHIP

16.1 A person shall cease to be a member if:

1.16.1 he resigns by notice in writing to the Trust;

1.16.2 he ceases to be entitled under this Constitution to be a member of any area within the Public Constituency or of any of the classes of the Staff Constituency;

1.16.3 he is expelled from membership in accordance with the provisions of this Constitution;

1.16.4 he dies.

16.2 An individual who is a member of the Public Constituency shall cease to be eligible to continue as a member if he ceases to live in the area of the Public Constituency of which he is a member save as provided elsewhere in these rules. In the event that a member moves to another Public Constituency area and requests to be a member in that area, if the Trust is satisfied that the individual concerned lives in such other area, that individual shall thereafter be treated as a member of that other area within the Public Constituency.

16.3 Where an individual is a member by virtue of their eligibility to be a member of a Staff Class and they cease to be eligible for membership of that Staff Class but are eligible for membership of some other Staff Class, then the Trust may give notice to that member of its intention to transfer them to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

PART C – OTHER PROVISIONS

17. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 17.1 The Common Seal of the Trust shall be kept by the Trust Secretary on behalf of the Chief Executive or designated officer in a secure place.
- 17.2 The seal of the Trust shall not be affixed to any documents unless the sealing has been authorised by a resolution of the Board, a committee, or, where the Board so decides, one or more Directors. The seal shall only be affixed in the presence of two Directors.
- 17.3 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by those who attested the seal. A report of all sealings shall be made to the Board at least quarterly. (The report shall contain details of the seal number, a description of the document and the date of sealing).

18. SIGNATURE OF DOCUMENTS

- 18.1 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 shall have given the necessary authority to some other person for the purpose of such proceedings.
- 18.2 The Chief Executive or nominated Director(s) shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

19. SECRETARY

- 19.1 The Trust shall have a Secretary, who may be an employee. The Secretary shall not be a Governor, or the Chief Executive or the Finance Director.
- 19.2 The Secretary shall be appointed and, where necessary, removed only by the Chair and Chief Executive acting jointly, who shall report their actions to the Board and the Council.
- 19.3 The Secretary's functions shall be set out within a job description which shall be approved by the Chair and the Chief Executive.

20.0 INDEMNITY FOR GOVERNORS, DIRECTORS AND THE SECRETARY

- 20.1 Members of the Council; and the Board; 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 duties, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Resolution to cover such costs.

ANNEX 8 Lead Governor Role Description

Role Description

Accountability:

The Lead is accountable to the Council of Governors collectively as a serving Member of the Council.

The Role:

- To be an external point of contact for NHS England (formerly Monitor / NSH Improvement) where it may be considered inappropriate for the Chair or the Deputy Chair, or for the Secretary to deal with a particular matter.
- To facilitate communications and a good working relationship between the Governors and the Executive Board and Trust Board including acting as the principle independent channel for communications between the Governors and Executive Board and Trust Board through the Chair, the Chief Executive, the Secretary or the Senior Independent Director.
- To consult routinely with the Governors, the Chair and the Secretary regarding the planning and preparation of the Council of Governors agenda.
- To be a member of the Nominations and Remuneration Committee.
- To contribute to the appraisal of the Chair by the Senior Independent Director, supported by the Secretary, in accordance with the process determined by the Council of Governors including the collation of input from other Governors and the Nominations and Remuneration Committee on the performance of the Chair.
- Contribute to the determination of the appraisal process of the Non-Executive Directors to be undertaken by the Chair and supported by the Nominations and Remuneration Committee.
- To recommend to the Council of Governors on behalf of the Nominations and Remuneration Committee any appointments/reappointments of Chair; Non-Executive Directors and/or the Chief Executive.
- To take an active role in the activities of the Council of Governors and to meet with the Chair and the Secretary on a regular basis to discuss relevant issues.
- Support the Chair and the Secretary in any action to remove a Governor due to unconstitutional behaviour in accordance with the Code of Conduct.
- To be involved in the induction process for any newly appointed Public Governor.
- The Lead Governor may call upon the support of the other Governors, the Chair, the Secretary and the Senior Independent Director to carry out their role effectively to the benefit of the Council of Governors.
- In liaison with the Chair and the Secretary, support the development of the skills and strengths of the Council of Governors and raise public awareness of all Governors.

- To chair meetings of Council of Governors where the Chair, Deputy Chair or other Non-Executive Director cannot chair the meeting due to a conflict of interest.
- Where approved by the Council and/or the Chair speak for and represent the Council at the AGM and on other occasions
- Other duties as requested by the Council of Governors or the Chair.
- Chair the Pre-Council of Governors meeting and any informal meetings.

The Person:

To fulfil this role effectively, the Lead Governor will need to:

- Be a publically elected Governor
- Have the confidence of Governor colleagues and members of the Executive Board and Trust Board
- Be able to forge constructive working relationships with colleagues
- Understand NHSI's role, the available guidance and the basis upon which NHSI may take regulatory action
- Be committed to the success of the Trust and understand the Trust's Constitution
- Have the ability to influence and negotiate
- Be able to present a well-reasoned, unbiased argument
- Demonstrate ability to maintain confidentiality of information.

The Appointment:

The tenure is two years with the option for re-election in accordance with due process, for up to the full tenure period of the elected Governor's 'appointment'.

In accordance with a process agreed by the Council of Governors, the Secretary will administer a bi annual nomination and election/re-election procedure that will require: -

- Submission of an expression of interest (for re-election and for new election candidates)
- Submission of a statement for support of no more than 250 words supporting candidature (only for NEW nominations and/or contested elections);
- Election by 'show of hands' or by secret ballot as determined by the relevant Council meeting.

Additional:

ANNEX 9

Code of Conduct for Governors

1.00 INTRODUCTION

- 1.01 The Council of Governors (the Council) in support of the individual governors has established a Code of Conduct for Governors which codifies the expectations of its individual Governors and the process which will be followed should there be a need to consider if a Governor has deviated from this Code.

2.00 FRAMEWORK FOR COUNCIL OF GOVERNORS

- 2.01 The Trust operates within a legal, regulatory and governance framework established by the NHS Act 2006, the Health and Social Care Act 2012, the NHS Foundation Trust Code of Governance published by Monitor in 2013 and updated in 2014 (**Code of Governance**) and Monitor's Risk Assessment Framework updated in August 2015 (**Risk Assessment Framework**) and other regulatory requirements and the Trust's Constitution. The Constitution defines the membership of the Council and defines the arrangements for appointing (and where necessary, removing) Governors.
- 2.02 The Trust's regulatory and governance framework is supplemented by this Code of Conduct for Governors and the Role Description for Governors set out in Annex 8 of the Constitution, both of which reflect the statutory responsibilities for the Council. It should be noted that nothing within this Code of Conduct shall take precedence over or in any way amend the Constitution or any regulatory requirements.

3.00 ROLE OF THE COUNCIL OF GOVERNORS

- 3.01 The role of the Council is defined in law and in Monitor's reference guide for NHS foundation trust governors dated October 2009 and updated in August 2013, including the Constitution. Although the role is not repeated here it is important as context for this Code of Conduct to recognise that it is essential for the good governance of the Trust for the Council and the Board of Directors (the Board) to engage actively and constructively. Such an approach will ensure that the Council is able to contribute to the development of the Trust's strategy and plans, approve transactions where appropriate, hold the Non-Executive Directors to account (for the performance of the Board), and represent to the Board the views of members and the public. This approach will also ensure that the Board takes into account the views of the Council – for example, in relation to the Trust's strategy - and that it seeks the Council's timely approval for transactions and other proposals as defined in the Constitution.

4.00 BOARD OF DIRECTORS/COUNCIL OF GOVERNORS ENGAGEMENT

- 4.01 The Terms of Reference for the Board and for the Council (and relevant Role Descriptions) state that the Board and Council will engage actively and constructively, recognising the Board's responsibility for determining the Trust's strategy and for directing and controlling the organisation. The Terms of Reference and the Constitution commit to a jointly-agreed work-plan to set out for each financial year the way in which the Board and the Council will work together. This will ensure that the Board and the Council consider business in a co-ordinated way, ensuring that the Council has the opportunity to comment on or approve (as appropriate by reference to the Constitution) proposals at the correct time.
- 4.02 This Code of Conduct commits the Council as a whole and Governors individually to engaging proactively and constructively with the Board, acting through the Chair, the Senior Independent Director and any Lead Governor where appropriate according to their roles. The Council will work with the Board for the best interests

of the Trust as a whole, taking into account all relevant advice and information presented to or requested by the Council. The Council will not unduly delay responses to proposals from the Board, acting proactively to agree with the Board the information which the Council will need in order properly to consider proposals.

5.00 CONDUCT OF GOVERNORS

5.01 This section of the Code sets out the conduct which all Governors agree to abide by. These commitments are in addition to compliance with regulatory requirements, the Code of Governance, the Constitution, the Terms of Reference for the Council and the Role Description for Governors.

Personal Conduct

5.02 Governors agree that they will:

- a) act in the best interests of patients and the Trust as a whole in the delivery of services within relevant financial and operational parameters;
- b) be honest and act with integrity and probity at all times;
- c) respect and treat with dignity and fairness, the public; patients; relatives; carers; NHS staff and partners in other agencies;
- d) not seek to profit from their position as a Governor or in any way use their position to gain advantage for any person;
- e) respect and value their fellow Governors as colleagues;
- f) ensure that no person is discriminated against on grounds of religion or belief; ethnic origin; gender; marital status; age; disability; sexual orientation or socio-economic status;
- g) show their commitment to team working by working constructively with their fellow Governors and the Board as well as with their colleagues in the NHS and the wider community;
- h) accept responsibility for their actions and generally take seriously the responsibilities which are commensurate with the decision-making rights assigned to the Council through the legal and regulatory framework;
- i) seek to ensure that the best interests of the public; patients; carers and staff are upheld in decision making and that those decisions are not influenced by gifts or inducements or any interests outside the Trust;
- j) not make, permit or knowingly allow to be made any untrue, misleading or misrepresentative statement either relating to their own role or to the functions or business of the Trust;
- k) at all times, uphold the values and core principles of the NHS and the Trust as set out in its Constitution;
- l) conduct themselves in a manner which reflects positively on the Trust and not in any manner which could be regarded as bringing it into disrepute, whether they are on Trust property or fulfilling their public function in the wider community;

- m) seek to ensure that the membership of the constituency from which they are elected is both properly informed and represented, or if they are appointed, then the body from which they are appointed is both properly informed and represented;
- n) at all times, uphold the seven principles of public life as set out by the Committee on Standards in Public Life (also known as the Nolan Committee and the Wicks Committee) as below:

Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves; their family or friends or other interested parties.

Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity: In carrying out public business, including making public appointments; awarding contracts or recommending individuals for awards or benefits, holders of public office should make choices on merit.

Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness: Holders of public office should be as open as possible about all the decision and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership: Holders of public office shall promote and support these principles by leadership and example.

- o) seek advice from the Chair or the Secretary on matters relating the Constitution, governance requirements or conduct, and have regard to the advice given to them.

Confidentiality

- 5.03 Governors will respect the confidentiality of the information to which they are made privy to as a result of their membership of the Council, except where information is made available in the public domain.
- 5.04 Governors will understand, endorse and promote the Trust's Information Governance and Security Policy in every aspect of their work.
- 5.05 Governors will make no public statements on behalf of the Trust or communicate in any way with the media without the prior consent of the Chair or a designated officer from the Trust's Communications department.

Declaration of Interests

- 5.06 It is essential for good corporate governance and to maintain public confidence in

the Trust that all decision making is robust and transparent. To support this, the Constitution and the Trust's Policy on Declaration of Interests set out requirements for Governors to declare relevant interests (as defined in the Constitution). Governors have a statutory responsibility to avoid interests which may conflict with the interests of the Trust.

- 5.07 Governors will declare interests on request from the Secretary or, as required by the Constitution, whenever they become aware of a potential conflict of interest in respect of a matter being considered by the Council. Governors should seek advice from the Secretary or the Chair where they are unsure as to whether an interest needs to be declared. Declared interests will be included in a Register of Interests, which will be published.

6.00 PARTICIPATION IN MEETINGS AND IN TRAINING AND DEVELOPMENT

- 6.01 The Council is required by the Constitution to hold meetings as required each year. The schedule for these meetings and for other activities will be proposed by the Secretary and is subject to approval by the Council. Governors will attend meetings of the Council, and of any committees or working groups to which they are appointed, or they will give apologies for absence where they are not able to attend.

- 6.02 The Trust has a statutory duty to support the Council to discharge its responsibilities, including through training and development for Governors. A programme of development and information seminars will be developed each year and it is expected that Governors will participate in such activities.

7.00 UPHOLDING THIS CODE OF CONDUCT

- 7.01 The Constitution provides that where there are concerns as to the conduct or performance of a Governor these are to be addressed in the first instance by the Chair, with support from the Secretary, to include training and development where is considered relevant and necessary. Where such concerns exist the Chair will write to the Governor concerned to set out the concerns and the action agreed to rectify or otherwise address them.

- 7.02 The Constitution provides for the circumstances in which a Governor can be removed from office, including where any Governor fails to comply with this Code of Conduct. It is for the Chair to propose removal from office if this is necessary after all other course of action, including training and development where relevant, have been exhausted. As required by the Constitution, it is for the Council to determine (in accordance with rules set out in the Constitution) whether any Governor should be removed from office following a proposal from the Chair.

Process for investigating potential non-compliance with this Code

- 7.03 The process outlined below is to provide a framework for reviewing any alleged non-compliance together with key principles to be followed. It should be noted that this process applies to all Governors irrespective of category (Public, Staff or Appointed).
- 7.04 Should a member of the Trust or a member of the Council of Governors be made aware that the behavior of a Governor is such that there may be a breach of the Code of Conduct they should inform the Chair or the Secretary as soon as possible. Upon receipt of such a notification the Chair will determine within 7 working days whether there is a prima facie case to address.
- 7.05 If the Chair in consultation with the Lead Governor believes there is a case, the Governor concerned will be notified and an initial investigation will be undertaken by a Governors' Compliance Committee which will be convened for the purpose

of investigating the complaint. The Governors Compliance Committee will consist of the Chair, 1 Staff Governor, 1 Public and 1 Appointed Governor (a total of 3 Governors). The Governors' Compliance Committee will not include any person who has already been involved in the complaint process.

- 7.06 An initial investigation will be conducted this will be undertaken by the Secretary or an appropriate member of their team. The initial investigation will seek to gather appropriate statements from the 'complainant' and/or witnesses. This should normally be completed within 15 working days.
- 7.07 Once information has been gathered the Governor concerned will be invited to meet with the Governors' Compliance Committee to respond to the issues. For personal support, on a non-professional basis, the Governor may choose at all times to be accompanied. The Committee should meet within 10 working days of the completion of the investigation.
- 7.08 The purpose of Governors' Compliance Committee meeting will be to establish whether there is sufficient information upon which a complaint could be upheld. At the conclusion of the meeting the Committee will decide if the matter should be referred to the Council and the Governors' Compliance Committee will make a recommendation to the Council in respect of the Governor. The recommendation to the Council of Governors will include the sanctions they deem appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and consequences, a requirement to undertake training, the suspension and/or removal of the Governor from office.
- 7.09 Following the Governors' Compliance Committee meeting the Governor under investigation will be formally written to within 5 working days setting out the recommendation prior to presentation to the Council.
- 7.10 The Council will in considering the most serious of sanctions (suspension or removal), require the approval of at least two-thirds of the total Council in order to implement. For all other sanctions a simple majority of those Governors in attendance will suffice.
- 7.11 Where there is any disagreement as to whether the proposal for removal of a Governor is justified, the Code of Governance, P34 para B.6.6 will apply. i.e. "an independent assessor agreeable to both parties shall be requested to consider the evidence and determine whether the proposed removal is reasonable or otherwise."
- 7.12 All statements and reports to the Governors' Compliance Committee and the Council will be held by the Secretary's team.

UHSUSSEX NHS FOUNDATION TRUST

ANNEX 10 - SCHEME OF RESERVATION

| REF | DECISIONS RESERVED TO THE BOARD | |
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| 2.2.1 | COUNCIL OF GOVERNORS | <p>The Council of Governors' statutory responsibilities are set out in the National Health Service Act 2006 and the Health and Social Care Act 2022.</p> <p>Decide the remuneration and allowances, and the other terms and conditions of office, of the chair and non-executive directors;</p> <p>Appoint and, if appropriate, remove the trust's external auditor; receive the trust's annual accounts, any report of the auditor on them and the annual report;</p> <p>Approve, by a majority voting, "significant transactions" as defined within the trust constitution;</p> <p>Approve, by a majority of all, an application by the trust to enter into a merger, acquisition, separation or dissolution;</p> <p>Decide whether the trust's private patient work would significantly interfere with the trust's principle purpose, i.e. the provision of goods and services for the health service in England or the performance of its other services;</p> <p>Approve, by a majority voting, any proposed increases in private patient income of 5% or more in any financial year;</p> |
| NA | THE BOARD | <p>General Enabling Provision</p> <p>The Board may determine any matter, for which it has delegated or statutory authority, it wishes in full session within its statutory powers.</p> |
| NA | THE BOARD | <p>Regulations and Control</p> <p>Approve Standing Orders (SOs), a schedule of matters reserved to the Board and Standing Financial Instructions for the regulation of its proceedings and business.</p> |

Suspend Standing Orders.

Vary or amend the Standing Orders.

Approve a scheme of delegation of powers from the Board to committees, Officers or other bodies.

Ratify any urgent decisions taken by the Chairman and Chief Executive in accordance with the SOs.

Approve and delegate authority from the Board to committees.

Require and receive the declaration of Board members' and Governors' interests that may conflict with those of the Trust and determining the extent to which that member may remain involved with the matter under consideration.

Require and receive the declaration of Executive and Non-Executive Directors' interests that may conflict with those of the Trust.
Approve arrangements for dealing with complaints.

Adopt the organisation structures, processes and procedures to facilitate the discharge of business by the Trust and to agree modifications thereto. For clarity this would comprise details of the structure of the Board and its sub-committees and the Directorate structure of the Trust. Organisational structures below Executive and Clinical Director are the responsibility of the Chief Executive.
Receive reports and/or minutes from committees including those that the Trust is required by regulation to establish and to take appropriate action on.

Approve arrangements relating to the discharge of the Trust's responsibilities as a corporate trustee for funds held by the trust.

Establish terms of reference and reporting arrangements of all committees and sub-committees that are established by the Board.
Approve arrangements relating to the discharge of the Trust's responsibilities as a bailer for patients' property.

Receive annual reports on the use of the Corporate Seal.

Ratify or otherwise instances of failure to comply with Standing Orders brought to the Chief Executive's attention.

Ensure compliance with the Code of Governance, the Risk Assessment Framework and the NHS Provider Licence.

Approve the "Going Concern" statement as part of the annual accounts approval process.

Non-Executive Directors shall appoint or remove the Chief Executive.

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| | | <p>The appointment of the Chief Executive shall require the approval of the Council of Governors.</p> <p>Approve the incorporation of new subsidiaries, to include the terms of articles of association and standing financial instructions.</p> |
| NA | THE BOARD | <p>Executive: Appointments/Dismissal/Redundancy</p> <p>Recommend the appointment of the Deputy Chairman and the Senior Independent Director to the Council of Governors.</p> <p>Appoint Chairs of Committees and dismiss committees (and individual members) that are directly accountable to the Board.</p> <p>Confirm appointment of members of any committee of the Trust as representatives on outside bodies.</p> |
| NA | THE BOARD | <p>Strategy, Plans and Budgets</p> <p>Define the strategic aims and objectives of the Trust.</p> <p>Approve proposals for ensuring quality and developing governance in services provided by the Trust, having regard to any guidance issued by NHS England, the Care Quality Commission and the Secretary of State.</p> <p>Approve the Trust's policies and procedures for the management of risk.</p> <p>Approve Outline and Final Business Cases for Capital Investment in line with the investment policy and Standing Financial Instructions.</p> <p>Approve the Trust's proposed organisational development proposals.</p> <p>Ratify proposals for acquisition, disposal or change of use of land and/or buildings.</p> <p>Approve PFI proposals.</p> <p>Approve proposals on individual contracts (other than NHS contracts) of a capital or revenue nature amounting to, or likely to amount to <i>over the defined limits within the SFIs and the investment policy</i>.</p> <p>Approve proposals in individual cases for the write off of losses or making of special payments above the limits of delegation to the Chief Executive and Chief Finance Officer (for losses and special payments) previously approved by the Board.</p> <p>Approve individual compensation payments <i>above limits of delegation to Executive Directors</i>.</p> |

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| | | <p>Approve such business plans, budgets and capital programmes submitted by the Chief Executive on at least an annual basis, including the approval of Cost Improvement Programmes.</p> <p>Approve business cases (requiring additional revenue resources) <i>above limits of delegation to Executive Directors</i>.</p> |
| 8.1 | THE BOARD | <p>Trust Management Committee</p> <p>Overall responsibility for policy, procedural documents such responsibility to be delegated by a specific policy for developing and approval of policies and other procedural documents as appropriate, which shall be approved and monitored by the Policy Review Group.</p> <p>The Committee shall have the delegated authority to act on behalf of the Board of Directors in accordance with the Constitution, Standing Orders, Standing Financial Instructions, and Scheme of Delegation. The limit of such delegated authority is restricted to the areas outlined in the Duties of the Committee and subject to the rules on reporting, both as defined below.</p> <p>The Committee shall be accountable to the Board of Directors of the Trust. The Committee shall make recommendations to the Board of Directors concerning any issues that require decision or resolution by the Board. The Committee shall refer to the Audit Committee, People & Culture Committee, Patient & Quality Committee, Finance & Performance Committee, any matters requiring review or decision-making in that forum. The Committee shall receive reports from all sub-groups, setting out any matters requiring escalation to the Finance & Performance Committee and provide assurance of effective standards and performance in their respective Departments.</p> |
| 3.1. | THE BOARD | <p>Audit</p> <p>Review of the annual audit letter received from the external auditor and agreement of proposed action, taking account of the advice, where appropriate, of the Audit Committee.</p> |
| NA | THE BOARD | <p>Annual Reports and Accounts</p> <p>Receive and approve the Trust's Annual Report and Annual Accounts prior to the submission to NHS England and Parliament and presentation to the Council of Governors and, subsequently, members of the Trust.</p> <p>Receive and approve the Annual Report and Accounts for funds held by the Trust's Charity.</p> |
| NA | THE BOARD | Monitoring of Committee Effectiveness |

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| | | <p>Receive such reports as the Board sees fit from committees in respect of their exercise of powers delegated or from Directors and Officers of the Trust.</p> <p>Continuously appraise the affairs of the Trust by means of the provision of such reports to the Board as the Board may require from directors, committees, and officers of the Trust. All monitoring returns required by NHS England as outlined in the NHS Provider License shall be reported, at least in summary, to the Board.</p> <p>Make such monitoring returns required by the Department of Health and/or NHS England (NHSE) and the Charity Commission where Board certification is required.</p> <p>Receive reports from the Chief Finance Officer on financial performance against budget including how income contracts are performing.</p> |
| 10.1 | APPOINTMENT AND REMUNERATION COMMITTEE | <p>The Committee will:</p> <p>A committee, consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint, discipline or remove the other Executive Directors.</p> <p>Review regularly the remuneration and terms of service of the Chief Executive and other Executive Directors (and other Very Senior Officers) to ensure they are fairly rewarded for their individual contribution to the Trust - having proper regard to the Trust's circumstances and performance and to the provisions of any national arrangements where appropriate;</p> <p>Decide the appropriate remuneration of the Chief Executive and other Executive Directors. Any decisions made by the Nomination and Remuneration Committee shall be recorded in the minutes of the Nomination and Remuneration Committee meetings;</p> <p>Monitor and evaluate the performance of individual Executive Directors;</p> <p>Advise on and oversee appropriate contractual arrangements for such staff including scrutiny of termination payments taking account of such national guidance as is appropriate.</p> <p>Approve senior staff redundancies.</p> |
| 3.1 | AUDIT COMMITTEE | <p>The Committee will:</p> <p>Review the establishment and maintenance of an effective system of integrated governance, risk management and internal control</p> |

across the whole of the organisation's activities (both clinical and non-clinical) that supports the achievement of the organisation's objectives, including approval of the Trust's policies and procedures for the management of risk, to gain assurance about the robustness of the system and controls.

Ensure the adequacy of the Risk Management Strategy in relation to the effective identification, assessment, mitigation and monitoring of risk within the Trust and ensure the implementation of the Strategy.

Review the adequacy of:

all statutory risk and control related disclosure statements (in particular the Annual Governance Statement, together with any accompanying Head of Internal Audit statement, external audit opinion or other appropriate independent assurances, prior to endorsement by the Board/governing body.

the underlying assurance processes (including the Board Assurance Framework and Corporate Risk Register) that indicate the degree of the achievement of corporate objectives, the effectiveness of the management of principal risks and the appropriateness of the above disclosure statements; the policies for ensuring that there is compliance with relevant regulatory, legal and code of conduct requirements and any related reporting and self-certifications.

the policies and procedures for all work related to counter fraud, bribery and corruption as set out in Secretary of State Directions and as required by the NHS Counter Fraud Authority (NHSCFA).

Review the Annual Accounts, Report, Financial Statements, and external audit opinion on the Financial Statements and Quality Account (if required) and make recommendations on the approval of the Annual Accounts and Annual Report to the Board.

Monitor and review the internal audit function to ensure that there is an effective internal audit function established by management that meets the mandatory NHS Internal Audit Standards, the Public Sector Internal Audit Standards, and provides appropriate independent assurance to the Audit Committee, to the Chief Executive as Accountable Officer, and to the Board of Directors.

Receive an annual report from the Internal Auditor and, where appropriate, make recommendations on actions to be taken to the Board.

Develop and implement a policy on the engagement of the External Auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the External Audit firm.

Make recommendations to the Council of Governors in relation to the appointment, re-appointment and removal of the external auditor and approval of the terms of engagement of the external auditor

Review the work and findings of the External Auditor and consider the implications and management's responses to their work. The

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| | | <p>Committee shall also monitor and review the External Auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant UK professional and regulatory requirements.</p> <p>Review the work and findings of the Counter Fraud Service and consider the implications and management's responses to their work.</p> <p>Review the findings of other significant assurance functions external to the organisation, and consider the implications to the integrated governance of the organisation.</p> <p>Review the work of other committees and groups within the organisation, whose work can provide relevant assurance to the Audit Committee's own scope of work. This includes the work of other Board Committees.</p> <p>Review reports and positive and negative assurances from directors and managers on the overall arrangements for governance, risk management and internal control. This will be evidenced through the Committee's use of an effective Assurance Framework to guide its work and that of the audit and assurance functions that report to it.</p> <p>Ensure that the systems for financial reporting to the Board, including those of budgetary control, and formal announcements relating to the Trust's financial performance are subject to review as to completeness and accuracy of the information provided to the Board.</p> <p>Review and approve write offs/losses and special payments in line with the limit set out in the Standing Financial Instructions.</p> <p>Review the annual reports on the implementation of strategies for: Health and Safety; Data Security Protection Toolkit</p> |
| 2.2. | PATIENT & QUALITY COMMITTEE | <p>The Committee will:</p> <p>Enable the Board to obtain assurance that high standards of care are provided by the Trust and, in particular, that adequate and appropriate governance structures, processes and controls are in place throughout the Trust to:</p> <ul style="list-style-type: none"> - promote safety and excellence in patient care - identify, prioritise and manage risks within the Trust - ensure the effective and efficient use of resources through evidence-based clinical practice - protect the health and safety and wellbeing of Trust employees <p>Enable the Board to obtain assurance that the Trust has systems in place to ensure it is compliant with and delivers:</p> <p>legal and statutory requirements agreed clinical standards and quality objectives</p> |

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| | | <p>quality standards required by NHS England and the Care Quality Commission</p> <p>Review the annual reports on the implementation of strategies for:</p> <p>Safeguarding Adults and Children:</p> <p>Infection Prevention Control</p> <p>Complaints</p> <p>Organ Donation</p> <p>Mortality</p> <p>Maternity & Perinatal care</p> <p>Patient Experience and public involvement and patient-centred care.</p> <p>Ensure effective arrangements are in place to assure high standards of clinical governance, including clinical effectiveness, management of clinical risk, practice standards and patient safety;</p> <p>Ensure effective arrangements are in place to deliver Care Quality Commission registration, requirements and outcomes in response to any CQC inspections and reports;</p> <p>Enable the Board to obtain assurance that the Trust has systems and procedures in place to identify learning from deaths, Serious Incidents and other incidents, complaints, claims and ensuring they are shared across the Trust and implemented to improve patient safety, patient experience and colleague health and wellbeing;</p> <p>Ensure the Trust has in place procedures to monitor and review the operational effectiveness of policies and procedures.</p> <p>The Committee will:</p> <p>Monitor the Trust's implementation of, and compliance with, current mental health legislation and proposed changes to such legislation, in particular the Mental Health Act 1983, within the Trust taking into account best practice;</p> <p>Consider the implications of any changes to legislation and regulations within the policies, practices, procedures and resource requirements of the Trust and its partner organisations.</p> <p>Monitor the processes relating to and outcomes of First Tier Tribunals (Mental Health) and of hearings held by the hospital managers' panels.</p> <p>Ensure there is an appropriate number of Hospital Managers' panel members in place with the appropriate skills and experience to fulfil their role.</p> <p>Monitor trends in compliance with and the application of the Mental Health Act 1983 (and any new Mental Health Acts or revisions to the existing Act) within the Trust and make recommendations where necessary.</p> <p>Receive reports following Care Quality Commission Mental Health Act compliance visits for information and comment and ensure appropriate action is agreed and implemented within the organisation.</p> |
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| | | <p>To receive reports on the application of the Mental Capacity Act 2005 within the Trust and make recommendations where necessary.</p> <p>Monitor delivery against the Trust's action plan developed as a result of the Care Quality Commission's Annual Report as instructed by Trust Board.</p> <p>Approve policies in relation to the Mental Health Act and Mental Capacity Act across the Trust and scrutinise the application of these policies throughout the Trust in relation to both Acts.</p> <p>Identify and address training issues in terms of delegation of responsibilities under the Mental Health Act 1983.</p> <p>Identify and address quality issues in terms of delegation of responsibilities under the Mental Health Act 1983.</p> <p>Manage risks identified and delegated by Trust Board and to identify and report to Trust Board any new risks that require escalation.</p> |
| 10. | FINANCE & PERFORMANCE COMMITTEE | <p>The Committee will:</p> <p>Consider and keep under review the Trust's medium term financial sustainability plan, in relation to both revenue and capital and risk;</p> <p>Review capital and revenue business cases above the Committee's authority limits as set out within the Trust's Standing Financial Instructions and Scheme of Delegation and make recommendation to the Board for approval.</p> <p>Examine the key principles and assumptions for the Trust's business planning and budget setting processes.</p> <p>Receive and monitor reports on financial performance including forecasts, cost improvement programmes and use of resources, noting any trends, exceptions and variances against plans on a Trust-wide and directorate basis and reviewing in detail any major performance variations.</p> <p>Review and make submissions to NHS England as necessary on behalf of the Board.</p> <p>Review major procurements and tenders.</p> <p>Recommend to the Board approval of the Trust's annual operational plan, capital investment plan and revenue budgets.</p> <p>Emergency Preparedness, Resilience and Response;</p> <p>Keep under review key strategic, commercial contracts and seek assurance that appropriate due diligence is undertaken on any new contracts and/or renewals.</p> |

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| | | <p>Monitor performance of commercial activities as necessary and ensure that such activities deliver improved patient care and/or experience and that the Trust's principal purpose is not jeopardised by over-development of commercial activity.</p> <p>Approve and review the Trust's treasury management and working capital policy as required;</p> <p>Review and monitor the strategic five-year capital programme and the annual capital budgets and recommend actions or mitigations to the Trust Board.</p> <p>Consider proposals for investment in the estate and technology to ensure alignment with Trust strategy.</p> <p>Approve the National Cost Collection process.</p> |
| 10. | PEOPLE & CULTURE COMMITTEE | <p>Oversee the development and delivery of the People Strategy, and providing strategic direction to the Board in respect of the elements contained within it.</p> <p>Identify and monitor key performance indicators relating to the delivery of the People Strategy, undertaking detailed review against these indicators and aspects of the People Strategy, as required, or as directed by the Board or another Committee of the Board.</p> <p>Review arrangements by which staff may raise in confidence, concerns about possible improprieties of financial reporting and control, clinical quality, patient safety or other matters through the Staff Surveys, Freedom to Speak Up Guardian or Guardian of Safeworking Hours.</p> <p>Review and implement strategies for: Organisational Development; Health & Wellbeing programmes Annual Workforce Planning, Equality and Diversity; Employee Relations Ensure that effective arrangements are in place to secure the availability of a competent and appropriately qualified workforce to deliver healthcare for the Trust. (including Medical Revalidation and Appraisal; Safer Staffing; Medical Education Exception reporting and GMC reporting.)</p> |
| 10. | CHARITABLE FUNDS COMMITTEE | <p>Ensure Funds Held on Trust (charitable funds) are managed in accordance with the Trust's SOs and SFIs, as approved by the Board.</p> <p>Receive regular reports from the Chief Finance Officer covering:</p> |

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| | | <p>Number and value of funds Purpose of funds Income and expenditure analysis</p> <p>Decide upon expenditure criteria.</p> <p>Ensure that the requirements of the Charities Acts and the Charities Commission are met.</p> <p>Provide reports to the Board of Directors (acting as the Corporate Trustee) as appropriate.</p> <p>Review the Annual Accounts prior to submission to the Corporate Trustee for formal approval.</p> |
| 10. | SINGLE IMPROVEMENT PLAN | <p>To support the Board in obtaining assurance that Trust is delivering the required improvements to deal with the Undertakings given by the Board to NHS England.</p> <p>Ensure that the Programme and any changes to that programme will deliver the Trust's undertakings given to NHS E (which whilst not being restricted will encompass the delivery of all CQC must and should do recommendations)</p> <p>The Committee will ensure that the SUIP development is aligned to the Trust's True North as defined as putting the patient first and foremost so all improvements ultimately benefit the people the Trust serves.</p> <p>The Committee is to challenge the reported progress on the delivery of the plan to be able to provide to the Board:</p> <p>A view as to the strength of assurance that improvements made are sustainable.</p> <p>Triangulate information provided to this Committee with information being provided to other Board Committees or externally provided information on the Trust. Specifically the Committee should not be seeking to duplicate the work of or the reporting to other Committees but rather triangulate the assurance flowing through those Committee with direct oversight of specific matters.</p> <p>Request remedial action plans where SIP workstreams are off trajectory.</p> <p>The Committee will receive information on the outcome of ICB / NHS E assurance meetings giving the Committee an update on this key partners views of the Trust's delivery. This will be through the SIP Executive routing update.</p> <p>The Committee will provide a view to the Board as to when the Board can approach NHS E to close the undertakings provided by the Trust.</p> |

The Committee Chair along with the Committee lead executive will provide a report to the Trust Board and the Council of Governors on the Trust's delivery of the SIP.

SCHEME OF DELEGATION DERIVED FROM THE ACCOUNTABLE OFFICER MEMORANDUM

| REF | DELEGATED TO | DUTIES DELEGATED |
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| 2.2.10 | CHIEF FINANCIAL OFFICER | Duty to prepare the accounts in accordance with the NHS Act 2006. Duty to personally sign the accounts. Witness before the Committee of Public Accounts to deal with questions arising from the accounts or from any report made to Parliament by the Comptroller and Auditor General under the National Audit Act 1983. |
| 2.2 | CHIEF EXECUTIVE | Responsible to Parliament for resources under his control. |
| | CHIEF EXECUTIVE | Responsible for overall organisation, management and staffing of the Foundation Trust and for its procedures in financial and other matters. Ensure that: <ul style="list-style-type: none"> a) there is a high standard of financial management in the Foundation Trust as a whole; b) financial systems and procedures promote the efficient and economical conduct of business and safeguard financial propriety and regularity throughout the Foundation Trust; and c) financial considerations are fully taken into account in decisions on Foundation Trust policy proposals. |
| | CHIEF FINANCIAL OFFICER | Personal responsibility for: <ul style="list-style-type: none"> the propriety and regularity of the public finances for which the Chief Executive is answerable; the keeping of proper accounts; prudent and economical administration in line with the principles set out in "<i>managing public money</i>"; avoidance of waste and extravagance; the efficient and effective use of all the resources in their charge. |
| | CHIEF EXECUTIVE | Required to: <ul style="list-style-type: none"> a) personally sign the accounts and accept personal responsibility for their proper form and content as prescribed by NHS England in accordance with the Act; b) comply with the financial requirements of the NHS Provider Licence; c) ensure that proper financial procedures are followed and that accounting records are maintained in a form suited to the requirements of management, as well as in the form prescribed for published accounts; d) ensure that the resources for which he is responsible are properly well managed and safeguarded, with independent and effective checks of cash balances in the hands of any official; e) ensure that assets for which he is responsible are controlled and safeguarded with similar care, and with checks as appropriate; f) ensure that protected property (or interest in) is not disposed of without the consent of NHS Improvement; g) ensure that conflicts of interest are avoided, whether in the proceedings of the Board of Directors, the Council of Governors |

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| | | <p>or the actions of advice of Foundation Trust staff; and</p> <p>h) ensure that, in the consideration of policy proposals relating to the expenditure for which he is responsible, all relevant financial considerations, including any issues of propriety, regularity or value for money, are taken into account and brought to the attention of the Board of Directors.</p> |
| | CHIEF EXECUTIVE | <p>Ensure that effective management systems appropriate for the achievement of the Foundation Trust's objectives, including financial monitoring and control systems, have been put in place. Ensure that managers at all levels:</p> <p>a) have a clear view of their objectives, and the means to assess and, wherever possible, measure outputs or performance in relation to those objectives;</p> <p>b) are assigned well-defined responsibilities for making the best use of resources, including a clinical scrutiny of output and value for money; and</p> <p>c) have the information (particularly about costs), training and access to the expert advice which they need to exercise their responsibilities effectively.</p> |
| | CHIEF EXECUTIVE | <p>Ensure that their arrangements for delegation promote good management and that they are supported by the necessary staff with an appropriate balance of skills.</p> |
| | CHIEF EXECUTIVE | <p>Responsibility to see that appropriate advice is tendered to the Board of Directors and the Council of Governors on all matters of financial propriety and regulation, and more broadly, as to all considerations of prudent and economical administration, efficiency and effectiveness. Determine how and on what terms such advice should be tendered, and whether in a particular case to make reference to their own duty, as Accounting Officer, to justify to the Public Accounts Committee, transactions for which they are accountable.</p> |
| | BOARD | <p>Act in accordance with the requirements of propriety or regularity; including the Fit and Proper Persons Test requirements.</p> |
| | CHIEF EXECUTIVE | <p>Make written objections to proposals by the Board of Directors, Council of Governors or Chair which he considers to infringe the requirement to act with the requirements of propriety or regularity. If the Board of Directors, Council of Governors or Chair decides to proceed, seek a written instruction to take the action in question, and inform Monitor of the position (if possible, before the decision is implemented)</p> |
| | CHIEF EXECUTIVE | <p>If a course of action is contemplated which raises an issue relating to his wider responsibilities for economy, efficiency and effectiveness, draw the relevant factors to the attention of the Board of Directors or Council of Governors and advise them in whatever way he deems appropriate. If his decision is overruled, and the proposal is one which he would not feel able to defend to the Public Accounts Committee as representing value for money, seek a written instruction before proceeding. Inform NHS England of such an instruction, if possible, before the decision is implemented. If there is no time to submit advice in writing due to extreme urgency, ensure that if the advice is overruled, both the advice and the instructions are recorded in writing immediately afterwards.</p> |
| | CHIEF EXECUTIVE | <p>Appear before the Public Account Committee from time to time to give evidence on the reports arising from examinations undertaken by the Comptroller and Auditor General, and answer questions concerning expenditure and receipts for which he is Accounting Officer.</p> |
| | CHIEF EXECUTIVE | <p>Furnish the Public Accounts Committee with explanations of any weaknesses in the matters covered in paragraphs 8-15 of the NHS Foundation Trust Accounting Officer Memorandum, to which his attention has been drawn by the Comptroller and Auditor General or about which they may wish to question to Accounting Officer.</p> |

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| | CHIEF EXECUTIVE | Ensure that he is adequately and accurately briefed on matters which are likely to arise at any hearing of the Public Accounts Committee. |
| | CHIEF EXECUTIVE | Ensure that he is generally available for consultation, and that in any temporary period of unavailability, there will be a senior officer in the Foundation Trust who can act on his behalf if required. |
| | BOARD | Where it becomes clear that the Accounting Officer is so incapacitated that he or she will be unable to discharge his responsibilities over a period of four weeks or more, appoint an acting Accounting Officer (usually the Finance Director), until his return. |
| | ACTING ACCOUNTING OFFICER | Sign accounts where the Accounting Officer is unable to sign in time for printing. |

DECISIONS RESERVED TO THE BOARD

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| | DELEGATED TO | AUTHORITIES/DUTIES DELEGATED |
| | CHAIR | Final authority in interpretation of Standing Orders (SOs). |
| | CHAIR | Recommend the appointment of the Deputy Chairman and the Senior Independent Director to the Council of Governors. |
| | COUNCIL OF GOVERNORS | To appoint the Chairman and Non-Executive Directors at a general meeting of the Council of Governors. To decide the period of office, remuneration and allowances, and other terms and conditions of office of the Chairman and other Non-Executive Directors. |
| | CHAIR | Call meetings of the Board. |
| | CHAIR | Chair all Board meetings and associated responsibilities. |
| | CHAIR | Give final ruling in questions of order, relevancy and regularity of meetings. |
| | CHAIR | Having a casting vote in the event of a tie. |
| | BOARD | Suspension of Standing Orders |
| | AUDIT COMMITTEE | Audit Committee to review every decision to suspend Standing Orders (power to suspend Standing Orders is reserved to the Board) |
| | BOARD | Variation or amendment of Standing Orders |
| | BOARD | Formal delegation of powers to sub committees or joint committees and approval of their constitution and terms of reference (terms of reference of sub committees may be approved by the Chief Executive.) |
| | CHAIR & CHIEF EXECUTIVE | The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised by the Chair and Chief Executive after having consulted at least two Non-Executive members. |
| | CHIEF EXECUTIVE | The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals that shall be considered and approved by the Board, subject to any amendment agreed during the discussion. |
| | ALL | Disclosure of non-compliance with Standing Orders to the Chief Executive as soon as possible. |
| | BOARD | Declare relevant and material interests. |
| | CHIEF EXECUTIVE OR SECRETARY TO | Maintain Register(s) of Interests. |

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| | THE TRUST | |
| | ALL STAFF | Comply with national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff". Comply with Trust's Ethical Standards Policy. Comply with Nolan principles. Fit and Proper Person requirements. (as required) |
| | ALL | Disclose relationship between self and candidate for staff appointment. (Chief Executive to report the disclosure to the Board.) |
| | CHIEF EXECUTIVE | Tendering and contract procedure. |
| | CHIEF EXECUTIVE | Waive formal tendering procedures. |
| | CHIEF EXECUTIVE | Report waivers of tendering procedures to the Audit Committee. |
| | CHIEF FINANCE OFFICER | Where a supplier is chosen that is not on the approved list the reason shall be recorded in writing to the CE. |
| | CHIEF EXECUTIVE AND CHIEF FINANCE OFFICER | Where one tender is received will assess for value for money and fair price. |
| | CHIEF EXECUTIVE | No tender shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these Instructions except with the authorisation of the Chief Executive. |
| | CHIEF EXECUTIVE OR CHIEF FINANCE OFFICER | No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these Instructions except with the authorisation of the Chief Executive. |
| | CHIEF EXECUTIVE | The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector. |
| | BOARD | All PFI proposals must be agreed by the Board. |
| | CHIEF EXECUTIVE | The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust. |
| | CHIEF EXECUTIVE | The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts. |
| | CHIEF EXECUTIVE | The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. |
| | CHIEF EXECUTIVE | Must ensure the Trust enters into contracts with service commissioners for the provision of NHS services. |
| | CHIEF EXECUTIVE | Approve the legally binding contract with the Integrated Care Board or successor body. |
| | CHIEF EXECUTIVE | Keep seal in safe place and maintain a register of sealing. |
| | CHIEF EXECUTIVE/ EXECUTIVE DIRECTOR | Approve and sign all documents that will be necessary in legal proceedings. |
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| SCHEME OF DELEGATION FROM STANDING FINANCIAL INSTRUCTIONS (SFIs) | | |
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| | DELEGATED TO | AUTHORITIES/DUTIES DELEGATED |
| | CHIEF FINANCE OFFICER | Approval of all financial procedures. |
| | CHIEF FINANCE OFFICER | Advice on interpretation or application of Standing Financial Instructions. |
| | ALL MEMBERS OF THE BOARD AND EMPLOYEES | Have a duty to disclose any non-compliance with these Standing Financial Instructions to the Chief Finance Officer as soon as possible. |
| | CHIEF EXECUTIVE | Responsible as the Accounting Officer to ensure financial targets and obligations are met and have overall responsibility for the System of Internal Control. |
| | CHIEF EXECUTIVE & CHIEF FINANCE OFFICER | Accountable for financial control but will, as far as possible, delegate their detailed responsibilities. |
| | CHIEF EXECUTIVE | To ensure all Board members, officers and employees, present and future, are notified of and understand Standing Financial Instructions and that they understand the responsibilities. |
| | CHIEF FINANCE OFFICER | Responsible for: implementing the Trust's financial policies and coordinating corrective action; maintaining an effective system of financial control including ensuring detailed financial procedures and systems are prepared and documented; ensuring that sufficient records are maintained to explain Trust's transactions and financial position; providing financial advice to members of Board and staff; maintaining such accounts, certificates etc as are required for the Trust to carry out its statutory duties. |
| | ALL MEMBERS OF THE BOARD AND EMPLOYEES | Responsible for security of the Trust's property, avoiding loss, exercising economy and efficiency in using resources and conforming to Standing Orders, Financial Instructions and financial procedures. |
| | CHIEF EXECUTIVE | Ensure that any contractor or employee of a contractor who is empowered by the Trust to commit the Trust to expenditure or who is authorised to obtain income are made aware of these instructions and their requirement to comply. |
| | AUDIT COMMITTEE | Provide independent and objective view on internal control and probity. |
| | CHAIR OF AUDIT COMMITTEE | Raise the matter at the Board meeting where Audit Committee considers there is evidence of ultra vires transactions or improper acts. |
| | CHIEF FINANCE OFFICER | Ensure an adequate internal audit service, for which he/she is accountable, is provided (and involve the Audit Committee in the selection process when/if an internal audit service provider is changed.) |
| | CHIEF FINANCE OFFICER | Decide at what stage to involve police in cases of misappropriation and other irregularities not involving fraud or corruption. |

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| | HEAD OF INTERNAL AUDIT | Review, appraise and report in accordance with NHS Internal Audit Manual and best practice. |
| | AUDIT COMMITTEE | Ensure cost-effective External Audit. |
| | CHIEF EXECUTIVE & CHIEF FINANCE OFFICER | Monitor and ensure compliance with the NHS Standard Contract, Service Condition 24 on fraud and corruption including the appointment of the Local Counter Fraud Specialist. |
| | CHIEF EXECUTIVE | Ensure the safety and security of officers, patients and visitors of the Trust, as part of the Trust's role as an employer and healthcare provider; safeguard Trust's premises and keep them secure. This includes the appointment of the Local Security Management Specialist. |
| | CHIEF EXECUTIVE | Compile and submit to the Board an Annual Plan. The content of the Annual Plan to comply with the NHS England Planning Guidance. |
| | CHIEF FINANCE OFFICER | Submit budgets to the Board for approval. Monitor performance against budget; submit to the Board financial estimates and forecasts. |
| | CHIEF FINANCE OFFICER | Ensure adequate training is delivered on an ongoing basis to budget holders. |
| | CHIEF EXECUTIVE | Delegate budgets to budget holders. |
| | CHIEF EXECUTIVE & BUDGET HOLDERS | Must not exceed the budgetary total or virement limits set by the Board. |
| | CHIEF FINANCE OFFICER | Devise and maintain systems of budgetary control. |
| | BUDGET HOLDERS | Ensure that a) no overspend or reduction of income that cannot be met from virement is incurred without prior consent of Board; b) approved budget is not used for any other than specified purpose subject to rules of virement; c) no permanent employees are appointed without the approval of the CE other than those provided for within available resources and manpower establishment |
| | CHIEF EXECUTIVE | Identify and implement cost improvements and income generation activities in line with the Integrated Business Plan, the three year financial plan and the Annual Plan for NHS Improvement. |
| | CHIEF EXECUTIVE | Submit monitoring returns to requisite monitoring organisations. |
| | CHIEF FINANCE OFFICER | Preparation of annual accounts and reports ensuring that a copy of the annual accounts and any reports of the external auditor are laid before Parliament and then sent to NHS England and that the annual report is presented to the Council of Governors. Prepare a report for approval by the Board on "Going Concern". |
| | CHIEF FINANCE OFFICER | Managing banking arrangements, including provision of banking services, operation of accounts, preparation of instructions and list of cheque signatories. |
| | CHIEF FINANCE OFFICER | Develop and maintain income systems, including system design, prompt banking, review and approval of fees and charges, debt recovery arrangements, design and control of receipts, provision of adequate facilities and systems for employees whose duties include |

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| | | collecting or holding cash. |
| | ALL EMPLOYEES | Duty to inform Chief Finance Officer of money due from transactions which they initiate/deal with. |
| | BOARD | Establish a Nomination and Remuneration Committee, in accordance with the constitution. |
| | NOMINATION AND REMUNERATION COMMITTEE | <p>The Committee will:</p> <p>decide the appropriate remuneration and terms of office for the Chief Executive and other Executive Directors (and Very Senior Officers) including all aspects of salary; provision for other benefits including pensions and cars and arrangements for termination of employment and other contractual terms and to advise the Board of Directors of any decisions made.</p> <p>regularly review, discuss and if necessary approve changes to the remuneration and terms of service of the Chief Executive and other Executive Directors (and other Very Senior Officers) to ensure they are fairly rewarded for their individual contribution to the Trust – having proper regard to the Trust's circumstances and performance and to the provisions of any national arrangements where appropriate and to advise the Board of Directors of any decisions made.</p> <p>monitor and evaluate the performance of individual senior employees, including Executive Directors.</p> <p>advise on and oversee appropriate contractual arrangements for such staff, including proper calculation and scrutiny of termination payments.</p> |
| | EXECUTIVE TEAM | Approval of variation to funded establishment of any directorate. |
| | CHIEF EXECUTIVE | Staff, including agency staff, appointments and re-grading. |
| | CHIEF FINANCE OFFICER | <p>Payroll:</p> <p>specifying timetables for submission of properly authorised time records and other notifications;</p> <p>final determination of pay and allowances;</p> <p>making payments on agreed dates;</p> <p>agreeing method of payment;</p> <p>issuing instructions</p> |
| | NOMINATED MANAGERS* | <p>Submit time records in line with timetable.</p> <p>Complete time records and other notifications in required form.</p> <p>Submit termination forms in prescribed form and on time.</p> |
| | CHIEF FINANCE OFFICER | Ensure that the chosen method for payroll processing is supported by appropriate (contracted) terms and conditions, adequate internal controls and audit review procedures and that suitable arrangements are made for the collection of payroll deductions and payment of these to appropriate bodies. |
| | CHIEF OF PEOPLE AND ORGANISATIONAL DEVELOPMENT | <p>Ensure that all employees are issued with a Contract of Employment in a form approved by the Board and which complies with employment legislation; and</p> <p>Deal with variations to, or termination of, contracts of employment.</p> |
| | CHIEF EXECUTIVE | Determine, and set out, level of delegation of non-pay expenditure to budget managers, including a list of managers authorised to place requisitions, the maximum level of each requisition and the system for authorisation above that level. |

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| CHIEF EXECUTIVE | Set out procedures on the seeking of professional advice regarding the supply of goods and services. |
| REQUISITIONER* | In choosing the item to be supplied (or the service to be performed) shall always obtain the best value for money for the Trust. In so doing, the advice of the Trust's adviser on supply shall be sought. |
| CHIEF FINANCE OFFICER | Shall be responsible for the prompt payment of accounts and claims. |
| CHIEF FINANCE OFFICER | advise the Board regarding the setting of thresholds above which quotations (competitive or otherwise) or formal tenders must be obtained; and, once approved, the thresholds should be incorporated in standing orders and regularly reviewed; prepare procedural instructions [where not already provided in the Scheme of Delegation or procedure notes for budget holders] on the obtaining of goods, works and services incorporating the thresholds; be responsible for the prompt payment of all properly authorised accounts and claims; be responsible for designing and maintaining a system of verification, recording and payment of all amounts payable; a timetable and system for submission to the Chief Finance Officer of accounts for payment; provision shall be made for the early submission of accounts subject to cash discounts or otherwise requiring early payment; instructions to employees regarding the handling and payment of accounts within the Finance Department; be responsible for ensuring that payment for goods and services is only made once the goods and services are received |
| APPROPRIATE EXECUTIVE DIRECTOR | Make a written case to support the need for a prepayment. |
| CHIEF FINANCE OFFICER | Approve proposed prepayment arrangements. |
| BUDGET HOLDER | Ensure that all items due under a prepayment contract are received (and immediately inform CFO if problems are encountered). |
| CHIEF EXECUTIVE | Authorise who may use and be issued with official orders. |
| MANAGERS AND OFFICERS | Ensure that they comply fully with the guidance and limits specified by the Chief Finance Officer. |
| CHIEF EXECUTIVE CHIEF FINANCE OFFICER | Ensure that the arrangements for financial control and financial audit of building and engineering contracts and property transactions comply with the guidance contained within CONCODE and ESTATECODE or other relevant guidance. The technical audit of these contracts shall be the responsibility of the relevant Director. |
| CHIEF FINANCE OFFICER | Lay down procedures for payments to local authorities and voluntary organisations made under the powers of section 28A of the NHS Act. |
| CHIEF FINANCE OFFICER | The CFO will advise the Board on the Trust's ability to pay dividend on Public Dividend Capital (PDC) and report, periodically, concerning the PDC debt and all loans and overdrafts. |
| BOARD | Approve a list of employees authorised to make short-term borrowings on behalf of the Trust. (This must include the Chief Executive and Chief Finance Officer .) |
| CHIEF FINANCE OFFICER | Prepare detailed procedural instructions concerning applications for loans and overdrafts. |

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| CHIEF EXECUTIVE OR CHIEF FINANCE OFFICER | Be on an authorising panel comprising one other member for short term borrowing approval. |
| CHIEF FINANCE OFFICER | Will advise the Board on investments and report, periodically, on performance of same. |
| CHIEF EXECUTIVE | Capital investment programme: ensure that there is adequate appraisal and approval process for determining capital expenditure priorities and the effect that each has on plans responsible for the management of capital schemes and for ensuring that they are delivered on time and within cost; ensure that capital investment is not undertaken without availability of resources to finance all revenue consequences; ensure that a business case is produced and presented to the Finance Committee. |
| CHIEF FINANCE OFFICER | Certify professionally the costs and revenue consequences detailed in the business case for capital investment. |
| CHIEF EXECUTIVE | Issue procedures for management of contracts involving stage payments. |
| CHIEF FINANCE OFFICER | Assess the requirement for the operation of the construction industry taxation deduction scheme. |
| CHIEF FINANCE OFFICER | Issue procedures for the regular reporting of expenditure and commitment against authorised capital expenditure. |
| CHIEF EXECUTIVE | Issue manager responsible for any capital scheme with authority to commit expenditure, authority to proceed to tender and approval to accept a successful tender. Issue a scheme of delegation for capital investment management. |
| CHIEF FINANCE OFFICER | Issue procedures governing financial management, including variation to contract, of capital investment projects and valuation for accounting purposes. |
| CHIEF FINANCE OFFICER | Demonstrate that the use of private finance represents value for money and genuinely transfers significant risk to the private sector. |
| BOARD | Proposal to use PFI must be specifically agreed by the Board. |
| CHIEF FINANCE OFFICER | Maintenance of asset registers. |
| CHIEF FINANCE OFFICER | Approve procedures for reconciling balances on fixed assets accounts in ledgers against balances on fixed asset registers. |
| CHIEF FINANCE OFFICER | Calculate capital charges in accordance with International Financial Reporting Standards and accepted accounting policies. |
| CHIEF EXECUTIVE | Overall responsibility for fixed assets. |
| CHIEF FINANCE OFFICER | Approval of fixed asset control procedures. |
| BOARD, | Responsibility for security of Trust assets including notifying discrepancies to CFO, and reporting losses in accordance with Trust |

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| | EXECUTIVE MEMBERS AND ALL SENIOR STAFF | procedure. |
| | CHIEF EXECUTIVE | Delegate overall responsibility for control of stores (subject to CFO responsibility for systems of control). Further delegation for day-to-day responsibility subject to such delegation being recorded. (Good practice to append to the scheme of delegation document.) |
| | CHIEF FINANCE OFFICER | Responsibility for systems of control over stores and receipt of goods. |
| | DESIGNATED PHARMACEUTICAL OFFICER | Responsibility for controls of pharmaceutical stocks |
| | DESIGNATED ESTATES OFFICER | Responsibility for control of stocks of fuel oil and coal. |
| | NOMINATED OFFICERS* | Security arrangements and custody of keys |
| | CHIEF FINANCE OFFICER | Set out procedures and systems to regulate the stores. |
| | CHIEF FINANCE OFFICER | Agree stocktaking arrangements. |
| | CHIEF FINANCE OFFICER | Approve alternative arrangements where a complete system of stores control is not justified. |
| | CHIEF FINANCE OFFICER | Approve system for review of slow moving and obsolete items and for condemnation, disposal and replacement of all unserviceable items. |
| | NOMINATED OFFICERS* | Operate system for slow moving and obsolete stock, and report to CFO evidence of significant overstocking. |
| | CHIEF EXECUTIVE | Identify persons authorised to requisition and accept goods from NHS Supply Chain (NHS Shared Business Agency) stores. |
| | CHIEF FINANCE OFFICER | Prepare detailed procedures for disposal of assets including condemnations and ensure that these are notified to managers. |
| | CHIEF FINANCE OFFICER | Prepare procedures for recording and accounting for losses, special payments and informing police in cases of suspected arson or theft. |
| | ALL STAFF | Discovery or suspicion of loss of any kind must be reported immediately to either head of department or nominated officer. The head of department / nominated officer should then inform the CE and CFO. |
| | BOARD | Approve write off of losses above the level delegated to nominated Executive Directors or other senior officers contained in the Financial Limits. |
| | CHIEF FINANCE OFFICER | Consider whether any insurance claim can be made. |
| | CHIEF FINANCE | Maintain losses and special payments register. |

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| | OFFICER | |
| | CHIEF FINANCE OFFICER | Responsibility for accuracy and security of computerised financial data. |
| | CHIEF FINANCE OFFICER | Satisfy himself/herself that new financial systems and amendments to current financial systems are developed in a controlled manner and thoroughly tested prior to implementation. Where this is undertaken by another organisation, assurances of adequacy must be obtained from them prior to implementation. |
| | DIRECTOR OF CORPORATE SERVICES | Shall publish and maintain a Freedom of Information Scheme. |
| | RELEVANT OFFICERS | Send proposals for general computer systems to CFO. |
| | DIRECTOR OF STRATEGY AND DIGITAL DEVELOPMENT | Ensure that contracts with other bodies for the provision of computer services for financial applications clearly define responsibility of all parties for security, privacy, accuracy, completeness and timeliness of data during processing, transmission and storage, and allow for audit review. Seek periodic assurances from the provider that adequate controls are in operation. |
| | DIRECTOR OF STRATEGY AND DIGITAL DEVELOPMENT | Ensure that risks to the Trust from use of IT are identified and considered and that disaster recovery plans are in place. |
| | DIRECTOR OF STRATEGY AND DIGITAL DEVELOPMENT | Where computer systems have an impact on corporate financial systems satisfy himself that: systems acquisition, development and maintenance are in line with corporate policies; data assembled for processing by financial systems is adequate, accurate, complete and timely, and that a management trail exists; the Director of Strategy and Digital Development and staff have access to such data; Such computer audit reviews are being carried out as are considered necessary. |
| | CHIEF EXECUTIVE | Responsible for ensuring patients and guardians are informed about patients' money and property procedures on admission. |
| | CHIEF FINANCE OFFICER | Provide detailed written instructions on the collection, custody, investment, recording, safekeeping, and disposal of patients' property (including instructions on the disposal of the property of deceased patients and of patients transferred to other premises) for all staff whose duty is to administer, in any way, the property of. |
| | MANAGERS | Inform staff of their responsibilities and duties for the administration of the property of patients. |
| | CHIEF FINANCE OFFICER | Shall ensure that each trust fund that the Trust is responsible for managing is managed appropriately. |
| | CHIEF FINANCE OFFICER | Ensure all staff are made aware of the Trust policy on the acceptance of gifts and other benefits in kind by staff. |
| | CHIEF EXECUTIVE | Retention of documents procedures in accordance with Records Management: NHS Code of Practice part 1 and part 2 (2006). |
| | CHIEF EXECUTIVE | Risk management programme. |
| | AUDIT COMMITTEE | Approve and monitor risk management programme. |

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| | BOARD | Decide whether the Trust Board decides to use the risk pooling schemes administered by NHS Resolution if the Trust will insure through the risk pooling schemes administered by the NHS Resolution or self-insure for some or all of the risks covered by the risk pooling schemes. If the Board of Directors decides not to use the risk pooling schemes for any of the risk areas (clinical, property and employers/third party liability) covered by the scheme this decision shall be reviewed annually. |
| | BOARD OF DIRECTORS | Where the Board decides not to use the risk pooling schemes administered by NHS Resilience for any one or other of the risks covered by the schemes, the Chief Finance Officer shall ensure that the Board is informed of the nature and extent of the risks that are self insured as a result of this decision. The Chief Finance Officer will draw up formal documented procedures for the management of any claims arising from third parties and payments in respect of losses that will not be reimbursed. |
| | CHIEF FINANCE OFFICER | Ensure documented procedures cover management of claims and payments below the deductible. |
| DECISIONS/DUTIES DELEGATED BY THE BOARD TO COMMITTEES | | DECISIONS DELEGATED BY THE BOARD TO COMMITTEES |
| | Audit Committee | Appointment of the Trust's Internal Auditors Appointment of the Trust's local counter fraud service Approve the Trust's accounting policies To agreed writes offs |
| | Nomination and Remuneration Committee | Agree the remuneration of the Executive team To agree the annual Fit and Proper Persons Return |
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| | Patient & Quality Committee | To receive the required Maternity Performance and Oversight Reports |
| | Finance & Performance Committee | To approve investments within their delegated limits |
| | People & Culture Committee | To approve the Freedom to Speak up Guardian |
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