



Derbyshire Community Health Services NHS Foundation Trust Constitution

**(contains Health and Social Care Act 2012 updates that are
expected to be in force at the trust's authorisation date)**

Version Control Box		
Version Number	Date	Amendment
1	December 2011	
3	July 2012	
4	October 2012	Updated as per the Health and Social Care Act 2012
5	February 2013	Updated to reflect provisions of the H&SCA 2012 likely to be in force as at expected authorisation date
6	May 2013	Updated to reflect comments by Monitor (NHS Improvement)
7	September 2014	Updated to reflect legislative and Code of Governance changes
8	July 2015	Amendment to Appointed Governors
9	January 2016	Review of Constitution and Standing Orders
10	March 2017	Review of Constitution and Standing Orders
11	July 2017	Increase in Derby City Public Governors from 1 to 2 Amendment to Section 5 of Annex 5
12	March 2018	Review of Constitution and Standing Orders Amendment to Appointed Governors
13	March 2019	Review of Constitution and Standing Orders Amendment to Appointed Governors,

		Staff Constituencies and Lead Governor tenure
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Derbyshire Community Health Services NHS Foundation Trust Constitution

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

Annual Members Meeting is defined in paragraph 11 of the constitution;

constitution means this constitution and all annexes to it;

NHS Improvement is the body corporate, previously known as Monitor, as provided by Section 61 of the 2012 Act;

NHS Foundation Trust Code of Governance means the NHS Foundation Trust Code of Governance (July 2014) which is issued by NHS Improvement (as updated or replaced).

2. Name

The name of the foundation trust is Derbyshire Community Health Services 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 fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The trust may provide goods and services for any purposes related to—
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2 the promotion and protection of public health.

- 3.4 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

- 4.1 The powers of the trust are set out in the 2006 Act.
- 4.2 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.3 Subject to any restrictions on the delegation of functions under the Mental Health Act 1983, any of these powers may be delegated to a committee of directors or to an executive director.

5. Membership and constituencies

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

- 5.1 a public constituency
- 5.2 a staff constituency

6. Application for membership

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

7. Public Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may, subject to paragraph 10 below and Annex 8, become or continue as a member of the trust.
- 7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of members in each 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, subject to paragraph 10 below and Annex 8, become or continue as a member of the trust provided:

- 8.1.1** he/she 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/she 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 (subject to Annex 8) 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 6 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.6** For the avoidance of doubt, the chair and other non-executive directors are not eligible to be members of the Staff Constituency.

9. Automatic membership by default – staff

- 9.1** An individual who is:
 - 9.1.1** eligible to become a member of the Staff Constituency, and
 - 9.1.2** invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

10. Restriction on membership

- 10.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3 An individual must be at least 12 years old to become a member of the trust.
- 10.4 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 8 – Further Provisions.

11. Annual Members' Meeting

- 11.1 The Trust shall hold an annual meeting of its members (“Annual Members’ Meeting”). The Annual Members’ Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members’ Meeting are set out in Annex 9 – Annual Members’ Meeting.

12. Council of Governors – composition

- 12.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

13. Council of Governors – election of governors

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust’s Authorisation are attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.

14. Council of Governors - tenure

- 14.1** An elected governor may hold office for a term(s) of up to 3 years per term and shall be eligible for re-election at the end of his/her first term (but not any subsequent term).
- 14.2** An elected governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.
- 14.3** An appointed governor may hold office for a term(s) of up to 3 years per term and shall be eligible for re-appointment at the end of his/her first term (but not any subsequent term).
- 14.4** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.

15. Council of Governors – disqualification and removal

- 15.1** The following may not become or continue as a member of the Council of Governors:
 - 15.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 15.1.2** a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 15.1.3** a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
 - 15.1.4** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.
- 15.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 15.4** Annex 5 also contains provision for the removal of members of the Council of Governors.

16. Council of Governors – duties of governors

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

17. Council of Governors – meetings of governors

- 17.1** The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or paragraph 27.1 below) or, in his/her absence, the Vice Chair (appointed in accordance with the provisions of paragraph 28 below), shall preside at meetings of the Council of Governors.
- 17.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting or part of a meeting for special reasons.
- 17.3** For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

18. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

19. Council of Governors – referral to the Panel

- 19.1** In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
- 19.1.1** to act in accordance with its constitution, or
 - 19.1.2** to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2** Subject to paragraph 19.3 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.

- 19.3** Where practicable, the Council of Governors shall consult the Board of Directors prior to voting to approve a referral in accordance with paragraph 19.2

20. Council of Governors - conflicts of interest of governors

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

21. Council of Governors – travel expenses

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

22. Council of Governors – further provisions

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

23. Board of Directors – composition

- 23.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 23.2** The Board of Directors is to comprise:
- 23.2.1** a non-executive Chair
 - 23.2.2** a maximum of seven other non-executive directors; and
 - 23.2.3** a maximum of seven executive directors.
- 23.3** One of the executive directors shall be the Chief Executive.
- 23.4** The Chief Executive shall be the Accounting Officer
- 23.5** One of the executive directors shall be the Director of Finance, Information and Strategy.
- 23.6** One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

- 23.7** One of the executive directors is to be a registered nurse or a registered midwife.

24. Board of Directors – general duty

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

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

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

- 25.1** he/she is a member of a Public Constituency, or
- 25.2** he/she is not disqualified by virtue of paragraph 31 below or Annex 8.

26. Board of Directors – appointment and removal of chair and other non-executive directors

- 26.1** The Council of Governors at an general meeting of the Council of Governors shall appoint or remove the chair of the trust and the other non-executive directors.
- 26.2** Removal of the chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 26.3** The initial chair and the initial non-executive directors are to be appointed in accordance with paragraph 27 below.

27. Board of Directors – appointment of initial chair and initial other non-executive directors

- 27.1** The Council of Governors shall appoint the chair of the applicant NHS Trust as the initial chair of the trust, if he/she wishes to be appointed.
- 27.2** The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.
- 27.3** The criteria for qualification for appointment as a non-executive director set out in paragraph 25 above (other than disqualification by virtue of paragraph 31 or Annex 8 below) do not apply to the appointment of the initial chair and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

- 27.4** An individual appointed as the initial chair or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his/her term of office as Chair or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he/she shall be appointed for 12 months.

28. Board of Directors – appointment of

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

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

- 29.1** The non-executive directors shall appoint or remove the Chief Executive.
- 29.2** At the first general meeting after the appointment, the Council of Governors must consider whether or not to approve the appointment of the Chief Executive and the appointment shall require the approval of the Council of Governors.
- 29.3** The initial Chief Executive is to be appointed in accordance with paragraph 30 below.
- 29.4** A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

30. Board of Directors – appointment and removal of initial Chief Executive

- 30.1** The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he/she wishes to be appointed.
- 30.2** The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

31. Board of Directors – disqualification

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

- 31.1.2** a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 31.1.3** a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
- 31.1.4** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.

31.2 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 8 – Further Provisions.

32. Board of Directors – meetings

- 32.1** Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 32.2** 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.

33. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

34. Board of Directors - conflicts of interest of directors

- 34.1** The duties that a director of the trust has by virtue of being a director include in particular –
 - 34.1.1** a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust; and
 - 34.1.2** a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 34.2** The duty referred to in sub-paragraph 34.1.1 is not infringed if –
 - 34.2.1** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

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

35. Board of Directors – remuneration and terms of office

- 35.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.
- 35.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors. Annex 8 sets out the arrangements for determining the remuneration, allowances and other terms

and conditions of office of the Chief Executive and other executive directors pending the establishment of such a committee.

36. Registers

The trust shall have:

- 36.1** a register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;
- 36.2** a register of members of the Council of Governors;
- 36.3** a register of interests of governors;
- 36.4** a register of directors; and
- 36.5** a register of interests of the directors.

37. Further provisions about the registers

Annexes 6 and 7 also contain further provisions relating to the registers.

38. Registers – inspection and copies

- 38.1** The trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 38.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.
- 38.3** So far as the registers are required to be made available:
 - 38.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 38.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract (subject to payment of any charge imposed pursuant to paragraph 38.4 below).
- 38.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

39. Documents available for public inspection

- 39.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 39.1.1** a copy of the current constitution,
 - 39.1.2** a copy of the latest annual accounts and of any report of the auditor on them, and
 - 39.1.3** a copy of the latest annual report.
- 39.2** The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 39.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 39.2.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 39.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 39.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 39.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 39.2.6** a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS Improvement's decision), 65KB (Secretary of State's response to NHS Improvement'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;
 - 39.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 39.2.8** a copy of any final report published under section 65I (administrator's final report);
 - 39.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and

39.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

39.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy (subject to payment of any charge imposed pursuant to paragraph 39.4 below).

39.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

40. Auditor

40.1 The trust shall have an auditor.

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

40.3 Annex 8 contains further provisions regarding the auditor.

41. Audit committee

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

42. Accounts

42.1 The Trust must keep proper accounts and proper records in relation to the accounts.

42.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

42.3 The accounts are to be audited by the trust's auditor.

42.4 The trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.

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

42.6 Annex 8 contains further provisions regarding the accounts.

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

43.1 The trust shall prepare an Annual Report and send it to NHS Improvement.

43.2 Annex 8 contains further provisions regarding Annual Reports.

- 43.3** The trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.
- 43.4** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 43.5** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 43.6** Each forward plan must include information about –
- 43.6.1** the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
 - 43.6.2** the income it expects to receive from doing so.
- 43.7** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 43.6.1 the Council of Governors must –
- 43.7.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
 - 43.7.2** notify the directors of the trust of its determination.
- 43.8** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

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

- 44.1** The following documents are to be presented to the Council of Governors at an annual meeting of the Council of Governors:
- 44.1.1** the annual accounts,
 - 44.1.2** any report of the auditor on them,
 - 44.1.3** the Annual Report including the Quality Report.
- (For the avoidance of doubt, nothing in this paragraph prevents the Council of Governors from holding a general meeting more than once a year.)
- 44.2** The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

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

45. Instruments

- 45.1** The trust shall have a seal.
- 45.2** The seal shall not be affixed except under the authority of the Board of Directors.
- 45.3** Annexes 7 and 8 contain further provisions regarding the trust's seal.

46. Amendment of the constitution

- 46.1** The trust may make amendments of its constitution only if –
- 46.1.1** more than half of the members of the Council of Governors of the trust voting approve the amendments, and
 - 46.1.2** more than half of the members of the Board of Directors of the trust voting approve the amendments.
- 46.2** Amendments made under paragraph 46.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 46.3** Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust) –
- 46.3.1** at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 46.3.2** the trust must give the members an opportunity to vote on whether they approve the amendment.
- 46.4** If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.
- 46.5** Amendments by the trust of its constitution are to be notified to 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.

47. Mergers etc. and significant transactions

- 47.1** The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.
- 47.2** The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust voting approve entering into the transaction. This constitution does not contain any description of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

ANNEX 1 – THE PUBLIC CONSTITUENCIES

The areas for the public constituencies are as follows:

Areas (unless stated otherwise, the areas are the electoral wards for the corresponding councils)	Seats on the Council of Governors	Minimum numbers of members
Amber Valley Erewash South Derbyshire	6	1025
Bolsover Chesterfield North East Derbyshire	5	855
Derbyshire Dales High Peak	4	515
Derby City	2	755
Rest of England (all electoral areas in England not falling within one of the areas/councils referred to above)	1	400
Total	18	3550

ANNEX 2 – THE STAFF CONSTITUENCY

The classes for the staff constituency are as follows:

Staff classes	Seats on the Council of Governors	Minimum numbers of members
Nursing	3	570
Medical and Dental	1	31
Other Registered Professionals	2	245
Healthcare Support, Facilities and Estates Staff	3	805
Administration & clerical staff and Managers	1	695
Total	10	2346

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors is structured as follows:

Elected Governors (Public)

CONSTITUENCY	NUMBER OF SEATS
Amber Valley, Erewash and South Derbyshire	6
Bolsover, Chesterfield and North East Derbyshire	5
Derbyshire Dales and High Peak	4
Derby City	2
Rest of England	1

Elected Governors (Staff)

CONSTITUENCY/CLASS	NUMBER OF SEATS
Nursing	3
Medical and Dental	1
Other Registered Professionals	2
Healthcare Support, Facilities and Estates Staff	3
Administration & clerical staff and Managers	1

Appointed Governors (Partners)

	NUMBER OF SEATS
Derbyshire County Council	1
The following organisations are specified by the trust for the purposes of paragraph 9(7) of Schedule 7 of the 2006 Act:	
One Governor to represent the Clinical Commissioning Groups in Derbyshire	1
Derby University	1

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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 (NHS Improvement, July 2014) 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;

“*NHS Improvement*” means the body corporate previously known as Monitor as provided by section 61 of the 2012 Act;

“*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/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 his/her 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 his/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/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 his/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/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/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 his/her 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 his/her 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 his/her vote using the text message voting system.

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his/her 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/she has not marked or returned any other voting information in the election, and
- (c) the particulars of his/her 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 his/her declaration of identity with his/her 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 his/her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by 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 his/her 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 his/her 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 his/her 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/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 his/her voter ID number in order to be able to cast his/her 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/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 his/her 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 his/her vote;
- (b) prevent a voter from voting for more candidates than he/she is entitled to at the election;
- (d) 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);
- (ii) the candidate or candidates for whom the voter has voted; and
- (iii) 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.

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/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 his/her 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/she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he/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 spoiled 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 his/her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoiled text message vote, if he/she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoiled text message vote unless he/she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoiled text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):
 - (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoiled 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 his/her 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/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/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 his/her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his/her 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 his/her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he/she wishes to cast his/her vote.

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

34. Voting procedure for remote voting by telephone

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

34.2 When prompted to do so, the voter will need to enter his/her 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 his/her vote by keying in the numerical voting code of the candidate or candidates, for whom he/she wishes to vote.

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

35. Voting procedure for remote voting by text message

35.1 To cast his/her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his/her voter ID number and the numerical voting code for the candidate or candidates, for whom he/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.

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

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

- (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 spoiled ballot papers and the list of spoiled 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.

STV41. Interpretation of Part 6

STV41.1 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

“*transfer value*” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 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.

43. The count

- 43.1 The returning officer is to:
 - (a) count and record the number of:
 - (iii) ballot papers that have been returned; and
 - (iv) 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.

43.2 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.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 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 the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (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 be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

- STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.
- STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him/her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him/her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

- FPP44.1 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 FPP44.2 and FPP44.3, be rejected and not counted.
- FPP44.2 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.
- FPP44.3 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/she can be identified by it.
- FPP44.4 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 FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- FPP44.5 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.

FPP44.6 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 FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 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.

FPP44.8 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/she can be identified by it.

FPP44.9 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.

FPP44.10 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.

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

(a) according to next available preference given on those ballot documents for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a)

to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat

any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he/she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he/she has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he/she obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

- FPP51.1 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

FPP52. Declaration of result for contested elections

FPP52.1 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/she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Derbyshire Community Health Services 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/she has declared elected.

FPP52.2 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.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he/she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Derbyshire Community Health Services 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 who he/she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

53.1 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/she has declared elected to the chair of the corporation, and
- (c) give public notice of the name of each candidate who he/she has declared elected.

54. Sealing up of documents relating to the poll

54.1 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.

54.2 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.

54.3 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.

55. Delivery of documents

55.1 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.

56. Forwarding of documents received after close of the poll

56.1 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.

57. Retention and public inspection of documents

57.1 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.

57.2 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.

57.3 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.

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

58.1 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.

58.2 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.

58.3 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.

58.4 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 his/her vote was given, and
- (ii) that NHS Improvement has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 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/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.

FPP59.2 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.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 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.

FPP59.5 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.

FPP59.6 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.

FPP59.7 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.

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 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) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

Election expenses

60. Election expenses

60.1 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 NHS Improvement under Part 11 of these rules.

61. Expenses and payments by candidates

61.1 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.

62. Election expenses incurred by other persons

62.1 No person may:

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

62.2 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

63. Publicity about election by the corporation

63.1 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.

63.2 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.

63.3 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.

64. Information about candidates for inclusion with voting information

64.1 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.

64.2 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.

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

65.1 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.

65.2 The provision by any individual of his/her own services voluntarily, on his/her own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS Improvement for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to NHS Improvement 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.
- 66.4 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.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHS Improvement will refer the application to the independent election arbitration panel appointed by NHS Improvement.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHS Improvement shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 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.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

67. Secrecy

67.1 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.

67.2 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.

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

68. Prohibition of disclosure of vote

68.1 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/she has voted.

69. Disqualification

69.1 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.

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

70.1 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/she considers appropriate.

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1 Council of Governors: Appointed Governors

The Appointed Governors are to be appointed by their appointing organisation in accordance with a process agreed from time to time with the Associate Director of Corporate Governance/Trust Secretary.

2 Council of Governors: Transitional Provisions for the Initial Elected Governors only

- 2.1 Subject to any other provisions of the constitution, the governors that are elected to the Council of Governors (the “Initial Elected Governors”) in the first elections to the Council of Governors (the “Initial Election”) shall hold office as follows.
- 2.2 Where a constituency or class of a constituency is entitled to elect one Initial Elected Governor at the Initial Election the successful candidate shall serve for a period of three years. Where a constituency or class of a constituency is entitled to elect two Initial Elected Governors at the Initial Election, the candidate who secures the highest number of votes within each constituency shall serve for the period of three years. The candidate who secures the next highest number of votes shall serve for a period of two years. Where a constituency or class of a constituency is entitled to elect:
- 2.2.1 three Initial Elected Governors within a constituency or class, the two with the highest number of votes will hold office for three years;
- 2.2.2 four Initial Elected Governors within a constituency or class, the three with the highest number of votes will hold office for three years;
- 2.2.3 five Initial Elected Governors within a constituency or class, the three with the highest number of votes will hold office for three years;
- 2.2.4 six Initial Elected Governors within a constituency or class, the four with the highest number of votes will hold office for three years
- and the remaining Initial Elected Governors in that constituency/class will hold office for two years.
- 2.3 In circumstances where either no candidates have stood for office, or, where the number of candidates who have stood for office is insufficient to fill all of the vacancies in question, the trust will hold further elections for that vacant office as soon as is reasonably practicable.

3 Council of Governors: Eligibility to be on the Council of Governors

In this section 3.1:

“Health Service Body” has the meaning in section 9(4) of the National Health Service Act 2006 (as amended from time to time); and

“NHS Organisation” means any Health Service Body or any NHS foundation trust.

“Council of Governors Roles and Responsibilities Statement” means the trust’s Council of Governors Roles and Responsibilities Statement (as amended or replaced)

“Working Day” means a day of the week not including a Saturday, Sunday or a public holiday

3.1 A person shall not be eligible to become or continue in office as a Governor of the trust if:

- 3.1.1 in the case of an Elected Governor, he/she ceases to be a member of the constituency (or class within a constituency) which he/she represents;
- 3.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its sponsorship of him/her or ceases to exist or the individual leaves the organisation;
- 3.1.3 any of the grounds contained in paragraphs 15.1 of the constitution apply to him/her, or he/she fails to satisfy the requirement in paragraph 15.2 of the constitution;
- 3.1.4 he/she has within the preceding two years been dismissed (otherwise than by reason of redundancy, by the coming to the end of a fixed term contract, or through ill health) from any paid employment with an NHS Organisation (including, without limitation, the trust);
- 3.1.5 he/she is a person whose tenure of office as a chair or as a member or director of an NHS Organisation has been terminated on the grounds that his/her appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of an interest in accordance with the standing orders;
- 3.1.6 he/she is a person who by reference to information revealed by a disclosure and barring service check is considered by the trust to be inappropriate whether on the grounds that his/her appointment might adversely affect public confidence in the trust (or bring the trust into disrepute) or otherwise;
- 3.1.7 he/she has failed to make, or has falsely made, any declaration as required by the constitution;

- 3.1.8 he/she is on a list maintained in accordance with section 141C (list of persons prohibited from teaching etc) of the Education Act 2002;
- 3.1.9 he/she is an executive or non-executive director of the trust,
- 3.1.10 he/she is an executive director, a non-executive director or a governor of another NHS foundation trust,
- 3.1.11 he/she is an executive or non-executive director, chair, chief executive officer of either another NHS Organisation or a body corporate whose business includes the provision of health care services, which in either case provides to a material extent services which are the same as, or substantially similar to, any services provided by the Trust;
- 3.1.12 he/she is a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 3.1.13 he/she is or has been a "relevant offender" for the purposes of the Sexual Offences Act 2003;
- 3.1.14 within the preceding five years he/she has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her;
- 3.1.15 he/she is a member of a local Authority Health Overview and Scrutiny Committee;
- 3.1.16 NHS Improvement has exercised its powers to remove him/her as a Governor of the trust or has suspended him/her from office or has disqualified him/her from holding office as a Governor of the trust or NHS Improvement has exercised any of those powers in relation to him/her on any other occasion whether in relation to the trust or some other NHS Foundation Trust;
- 3.1.17 he/she has received a written warning from the trust for verbal and/or physical abuse towards trust staff;
- 3.1.18 (in relation to a person that is seeking to become a Governor) his/her term of office has been terminated pursuant to paragraph 4 of this Annex below within the 3 year period specified in paragraph 4.5 below
- 3.1.19 he/she is a person who is incapable by reason of mental disorder, illness or injury of managing and/or administering his/her property and/or his/her affairs;
- 3.1.20 he/she is a person who is an occupant of the same household and/or is the spouse, partner, parent or child of a Director or Governor of the trust;

- 3.1.21 he/she is a person who has refused without reasonable cause to undertake any training which the trust and/or the Council of Governors requires Governors to undertake;
 - 3.1.22 he/she is a person who has failed to sign and deliver to the Associate Director of Corporate Governance/Trust Secretary (within such reasonable period as the trust has specified) a statement in the form required by the trust confirming acceptance of the Governors' Code of Conduct (in the form in force from time to time);
 - 3.1.23 he/she is a person that has otherwise failed to fulfil any formalities that are required by the trust to be completed before the individual becomes a Governor;
 - 3.1.24 he/she is a member of a Staff Class and any professional registration relevant to his/her eligibility to be a member of that Staff Class has been suspended by the appropriate professional regulatory body for a continuous period of more than six months;
 - 3.1.25 he/she has had his/her name removed (by reason of inefficiency, fraud or unsuitability) in accordance with the NHS (Performers List) Regulations 2013 (as amended or replaced) and has not subsequently had his/her name included in such a list; or
 - 3.1.26 he/she has failed to repay (without good cause) any monies properly owed to the trust.
- 3.2 Where a person has been elected or appointed to be a Governor and he/she becomes disqualified or removed from office under paragraph 15 of the constitution or paragraph 3.1 of this Annex above, he/she shall notify the Associate Director of Corporate Governance/Trust Secretary in writing of such disqualification and/or (as the case may be) removal as soon as practicable and in any event within 14 working days of first becoming aware of those matters which rendered him/her disqualified or removed.
- 3.3 If it comes to the notice of the Associate Director of Corporate Governance/Trust Secretary that the Governor is disqualified pursuant to paragraph 15 of the constitution or paragraph 3.1 of this Annex above, whether at the time of the Governor's appointment or later, the Associate Director of Corporate Governance/Trust Secretary shall immediately declare that the individual in question is disqualified and give him/her notice in writing to that effect as soon as practicable and in any event within 14 working days of the date of the said declaration. In the event that the Governor shall dispute that he/she is disqualified, and notifies the trust in writing within 14 working days of the date upon which the notice was given to the Governor, paragraph 8 of Annex 8 below shall apply and the Associate Director of Corporate Governance/Trust Secretary shall implement the outcome of the independent assessor's decision.

3.4 Upon the giving of notice under paragraphs 3.2 and/or 3.3 of this Annex above (but subject to the independent assessor's decision where paragraph 8 of Annex 8 applies) that person's tenure of office (if any) shall be terminated and he/she shall cease to act as a Governor and his/her name shall be removed from the register of Governors.

4 **Council of Governors: Termination of Tenure**

4.1 A Governor's term of office shall be also terminated immediately:

4.1.1 by the Governor giving notice in writing to the Associate Director of Corporate Governance/Trust Secretary of his/her resignation from office at any time during that term of office;

4.1.2 by the trust if any grounds exist under paragraph 4.2 of this Annex and paragraph 4.3 of this Annex applies;

4.1.3 he/she has failed to attend three meetings of the Council of Governors in a 12 month period unless the Council of Governors are satisfied by a majority of three-quarters that:

(a) the absence was due to a reasonable cause; and

(b) he/she will be able to start attending meetings of the Council of Governors within such a period as the other Governors consider reasonable.

4.2 The grounds specified in paragraph 4.1.2 of this Annex are that:

4.2.1 the Governor has adversely affected the ability of the trust to: fulfil its principal purpose or its other purposes under this constitution, or otherwise discharge its duties and functions;

4.2.2 the Governor has adversely affected the ability of the trust to work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;

4.2.3 the Governor has adversely affected public confidence in the goods and services provided by the trust;

4.2.4 the Governor brings the trust into disrepute;

4.2.5 the Governor's actions are considered to be detrimental to the interests of the trust;

4.2.6 it would not be in the best interests of the trust for that person to continue in office as a Governor;

4.2.7 the Governor is considered by the Council of Governors to be a vexatious or persistent litigant or complainant with regard to the trust's affairs and his/her continuance in office would not be in the best interests of the trust;

- 4.2.8 the Governor's conduct as a Governor has failed to comply with the values and principle of the National Health Service or the trust;
 - 4.2.9 the Governor has an actual or potential conflict of interest which prevents the proper exercise of their duties; or
 - 4.2.10 the Governor has committed a breach of the Code of Conduct for Governors.
- 4.3 If the Governor in question is adjudged to have acted in accordance with any of the grounds specified in paragraph 4.2 of this Annex above, by a majority of three-quarters of the Council of Governors present and voting, then the Governor will vacate his/her office immediately.
- 4.4 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the independent assessor pursuant to paragraph 8 of Annex 8 of the constitution within 14 working days of the date upon which notice in writing of the Council of Governor's decision made in accordance with paragraph 4.3 of this Annex is communicated to the Governor concerned. The Council of Governors shall implement the outcome of any dispute resolution.
- 4.5 A Governor who resigns under paragraph 4.1.1 of this Annex or whose office is terminated under this paragraph 4 or paragraph 3 of this Annex above shall not be eligible to stand for re-election to the Council of Governors for a period of three years from: the date of his/her resignation or removal from office, or the date upon which any appeal against his/her removal from office is disposed of, whichever is later.
- 4.6 In the event that an elected Governor's seat falls vacant before the end of the term of office, the provisions as set out at paragraph 5 of this Annex below shall apply.

5 **Council of Governors: Vacancies**

- 5.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the following provisions will apply.
- 5.2 Where the vacancy arises amongst the Appointed Governors, the trust will request that the relevant appointing/sponsoring organisation appoint a "Replacement Governor" within 30 working days to hold office for the remainder of the former governor's term of office.
- 5.3 Subject to the provisions of paragraphs 5.4 and 5.5 of this Annex below, where the vacancy arises amongst the Elected Governors, the Council of Governors shall:
- 5.3.1 offer the candidate who was ranked next highest in the last election for the constituency, class or Staff Class (as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office of Governor until the next scheduled election, at which time

the seat will fall vacant and subject to election for any unexpired period of office;

5.3.2 if that candidate does not accept that invitation within 14 working days of the date of the invitation then the vacant office shall be offered to that candidate who was next highest ranked in the last held election (and then, as necessary, that process can be repeated until the vacancy is filled) but if no other candidate stood for election to that office or there are no remaining candidates who stood for election, to that office, or no candidate accepts the invitation in accordance with the above provisions within such time as the trust may in its absolute discretion decide, paragraph 5.3.3 of this Annex below shall apply;

5.3.3 (where this paragraph applies pursuant to paragraph 5.3.2 above) either call an election as soon as practicable to fill the seat for the remainder of that terms of office or hold the vacancy until the next scheduled election

5.4 Subject to the provisions of paragraph 5.5 of this Annex below:

5.4.1 where an Elected Governor selected to fill a vacancy pursuant to paragraph 5.3 above (a "Replacement Elected Governor") ceases for whatever reason to hold office the process at paragraph 5.3 shall apply to determine how that vacancy is filled; and

5.4.2 where an Elected Governor that is not a Replacement Elected Governor ceases for whatever reason to hold office within the last twelve months of his/her term of office, the office shall remain vacant until the next scheduled election takes place.

5.5 Where the termination of a Governor's term of office causes the total number of Public Governors to be equal to or fewer than the other Governors, then an election for that vacant office shall be held as soon as reasonably practicable.

5.6 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

6 Appointment, suspension and removal of the Chair and other Non-Executive Directors

6.1 The Chair and other Non-Executive Directors are to be appointed by the Council of Governors following a process of open competition (but subject to paragraph 25 of the constitution). On expiry of their term, the then current Chair or Non-Executive Directors may stand for reappointment for a term of such duration as is compliant with the NHS Foundation Trust Code of Governance. Six months before the end of the term of office of the Chair or a Non-Executive Director (as the case may be), the Council of Governors will adopt a procedure as set out at paragraph 7 of this Annex

below for selecting candidates for the offices of the Chair and the Non-Executive Directors which shall provide for the process to be open and fair and in accordance with any guidance issued by NHS Improvement.

- 6.2 Removal of the Chair or another Non-Executive Director shall in accordance with the procedure set out in paragraphs 26.1 and 26.2 of the constitution require approval of three-quarters of the members of the Council of Governors and where practicable, shall be subject to the Council of Governors first ensuring that they have complied in full with the Trust's Engagement Policy (as defined in Annex 6 below).
- 6.3 Suspension of the Chair or another Non-Executive Director (including approval of the duration of the suspension and any terms applicable to the period during which the Chair is suspended) shall also require the approval of three-quarters of the members of the Council of Governors.
- 6.4 Pending the establishment of the Council of Governors, the matters referred to at paragraph 35.1 of the constitution shall, for the initial Chair and Non-Executive Directors, be dealt with in accordance with the terms and conditions applicable to non-executive directors of the applicant NHS Trust.

7 Council of Governors: Nominations and Remuneration Committee

- 7.1 The Council of Governors shall establish a committee of its members to be called the Nominations and Remuneration Committee to assist the Council of Governors in the selection of candidates for the office of Chair and Non-Executive Directors.
- 7.2 The Chair or an independent non-executive director will chair the Nominations and Remuneration Committee provided that a person may not act as the chair of the committee, for that part of the agenda, if the role that they occupy is being considered as part of the agenda. Where the appointment of the Chair or any non-executive director is to be considered, a governor can (at the discretion of the Nomination and Remuneration Committee) chair the committee.

The functions of the Nominations and Remuneration Committee shall be as follows:

- 7.2.1 determine a criteria and agree with the Council of Governors a process for the selection of candidates for office as Chair or other Non-Executive Director of the trust having first consulted with the Board of Directors as to those matters and having regard to such views as may be expressed by the Board of Directors (but subject to paragraph 25 of the constitution) and any candidates for the office of Chair must meet the independence criteria set out in the NHS Foundation Trust Code of Governance;
- 7.2.2 to seek by way of open advertisement and other means, candidates for office and to assess and select for interview such

candidates as are considered appropriate and in doing so the Nominations and Remuneration Committee shall be at liberty to seek advice and assistance from persons other than members of the Nominations and Remuneration Committee or the Council of Governors;

- 7.2.3 to make recommendation to the Council of Governors as to potential candidates for appointment as Chair or other Non-Executive Director, as the case may be;
 - 7.2.4 on a regular and systematic basis monitor the performance of the Chair and other Non-Executive Directors and make reports thereon to the Council of Governors from time to time when requested to do so or when in the opinion of the Nominations and Remuneration Committee the results of such monitoring ought properly to be brought to the attention of the Council of Governors; and
 - 7.2.5 consider and make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Chair and other Non-Executive Directors
- 7.3 The Council of Governors shall resolve in general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors as to the suitability of the available candidates including (but not limited to) their qualifications, skills and experience.
- 7.4 The Council of Governors may consider candidates for membership of the Board of Directors other than those made by the Nominations and Remuneration Committee (but subject to paragraph 25 of the constitution).

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

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1 INTRODUCTION

- 1.1 The Derbyshire Community Health Services NHS Foundation Trust (the "**Trust**") became a Public Benefit Corporation on 1 November 2014 following authorisation by NHS Improvement pursuant to the National Health Service Act 2006 (the "**2006 Act**").
- 1.2 The principal place of business of the Trust is Ash Green Learning Disability Centre, Ashgate Road, Ashgate, Chesterfield, Derbyshire, S42 7JE
- 1.3 The Trust is governed by the 2006 Act (as amended), its Constitution and the licence granted by NHS Improvement (the "Regulatory Framework"). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.

2 DEFINITIONS

- 2.1 In these Standing Orders:

"**2006 Act**" means the National Health Service Act 2006, as amended by the Health and Social Care Act 2012

"**Annual Accounts**" means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 of the 2006 Act

"**Annual Report**" means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act

"**Auditor**" means the Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 40 of the Constitution

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

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

"**Chief Executive**" means the Chief Executive of the Trust

"**Code of Conduct**" means any code which the Trust may publish from time to time to govern or guide the conduct of the Council of Governors of the Trust

"Constitution" means the Constitution together with the attached Annexes

"Council of Governors" means the Council of Governors as constituted in accordance with the Constitution

"Deputy Lead Governor" means a Public Governor elected by the Council of Governors who provides cover for the Lead Governor should they be unable to carry out their duties

"Financial Year" means the period beginning with the date on which the Trust is authorised pursuant to the 2006 Act and ending on the following 31 March, and each successive period of 12 months beginning 1 April

"Governor" means a member of the Council of Governors elected or appointed as provided by the Constitution

"Lead Governor" means a Public Governor elected by the Council of Governors to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (NHS Improvement, July 2014) or any later version of such code

"NHS Improvement" is the body corporate previously known as Monitor, as provided by Section 61 of the Health and Social Care Act 2012

"Non-Executive Director" means a member of the Board of Directors who does not hold an executive office of the Trust

"Nominations and Remuneration Committee" means the committee established in accordance with paragraph 7 of Annex 5 of the Constitution

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

"Public Constituency" means an area specified as an area for a public constituency pursuant to paragraph 7 / annex 1 of the Constitution

"Standing Orders (SO)" means the Standing Orders of the Council of Governors

"Staff Constituency" means the constituency of staff of the Trust constituted in accordance with paragraph 8 of the Constitution

"Trust" means Derbyshire Community Health Services NHS Foundation Trust

"Trust Secretary" means a person appointed by the Trust (jointly by the Chief Executive and the Chair) to be the Trust Secretary whose responsibilities in relation to the Council of Governors are likely to include (without limitation) acting independently of the Council of Governors, providing advice on corporate governance issues to the Council of Governors and the Chair and monitoring the Trust's compliance with the Regulatory Framework and these Standing Orders

"Vice Chair" means one of the Non-Executive Directors appointed by the Council of Governors, either generally or for a specific meeting, to preside at a meeting of the Council of Governors in the absence of the Chair

"Voluntary Organisation" means a body, other than a public or local authority, the activities of which are not carried on for profit

"Working Day" means a day of the week not including Saturday, Sunday or a public holiday

3 **THE COUNCIL OF GOVERNORS**

- 3.1 In addition to the general duties in paragraph 16 of the Constitution, the general roles and responsibilities of the Governors are as follows:
- 3.1.1 ensure that the Trust operates in accordance with its Constitution;
 - 3.1.2 advise the Board of Directors when requested to do so by the Board of Directors regarding the Trust's future plans and priorities;
 - 3.1.3 to monitor the performance of the Trust against its forward plan with a view to satisfying itself that the Board of Directors is fulfilling its responsibilities in this regard. This will be achieved by regular briefings on the performance of the Trust at its meetings, and being able to consider and comment on that performance;
 - 3.1.4 ensure continued success of the organisation through overseeing of effective management, partnership working and maintenance of NHS values and principles;
 - 3.1.5 oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in ensuring that the Council of Governors reflects all the interests of the membership community;
 - 3.1.6 to share local responsibility for the success of the Trust, in particular by building and sustaining a wide consensus to the vision for the Trust and by members representing the services to their respective communities and organisations and vice versa;
 - 3.1.7 to instigate or be involved in review of a specific issue, or be involved in further development of a particular strategy through specific working groups;
 - 3.1.8 providing views to the Board of Directors on the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set;
 - 3.1.9 developing membership;

- 3.1.10 representing the interests of the Members; and
 - 3.1.11 holding the Board of Directors to account in relation to the Trust's performance in accordance with the Regulatory Framework.
- 3.2 The roles and responsibilities of the Governors also include (without limitation):
- 3.2.1 subject to paragraphs 26 and 27 of the Constitution, to appoint or remove the Chair and the other Non-Executive Directors;
 - 3.2.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors;
 - 3.2.3 to appoint or remove the Auditor;
 - 3.2.4 to receive and consider the annual accounts, any report of the Auditor on them and the Annual Report including the Quality Report;
 - 3.2.5 to consider resolutions to remove a Governor pursuant to Annex 5 above;
 - 3.2.6 approve (by a majority of the Council of Governors voting) an appointment (by the Non-Executive Directors) of the Chief Executive (and Accounting Officer) other than the initial Chief Executive appointed in accordance with paragraph 19(5) of Schedule 7 to 2006 Act;
 - 3.2.7 give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the forward plan in respect of each Financial Year to be given to NHS Improvement; and/or
 - 3.2.8 respond as appropriate when consulted by the Directors.
- 3.3 Notwithstanding the provisions of paragraphs 3.1 and 3.2 of these Standing Orders, the Governors may exercise other functions at the request of the Board of Directors.
- 3.4 Notwithstanding the provision of paragraphs 3.1 and 3.2 of these Standing Orders, the Governors shall exercise their own skill and judgement in the conduct of Trust affairs and shall in their stewardship of Trust affairs bring an appropriate perspective of the constituency or organisation by which they were elected or appointed.
- 3.5 The Council of Governors may, through the Associate Director of Corporate Governance/Trust Secretary, request that advisers assist it in carrying out its duties.

- 3.6 A governor may, in the circumstances specific in paragraphs 19.1 and 19.2 of the Constitution, refer certain matters to a panel appointed by NHS Improvement.
- 3.7 All business shall be conducted in the name of the Trust.

4 **MEETINGS OF THE COUNCIL OF GOVERNORS**

4.1 **Admission of the Public**

- 4.1.1 The public shall be entitled to attend all meetings of the Council of Governors except where the Council of Governors resolves that members of the public shall be excluded from all or part of a meeting on the grounds that:
- (a) any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - (b) for other reasons stated in the resolution and arising from the nature of the business or the proceedings, that the Council of Governors believe are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 4.1.2 Nothing in these SOs shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.

4.2 **Calling Meetings**

- 4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least four meetings in any year including:
- (a) an annual governor meeting no later than the 30 November in each year (apart from the first year) when the Council of Governors are to receive and consider the Annual Accounts, any report by the Auditor, the Annual Report including the Quality Report; and
 - (b) any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.
- 4.2.2 The Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least three quarters of the members of the Council of Governors and specifying the business to be transacted at the meeting, has been presented to him/her, or if, without so

refusing, the Chair does not call a meeting within five working days after such requisition has been presented to him/her at the Trust's headquarters, such three-quarters or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

- 4.2.3 The Council of Governors may invite the Chief Executive, member of the Board of Directors or a representative of the financial auditor or other advisors to attend a meeting of the Council of Governors.
- 4.2.4 The Council of Governors may agree that its Governors can participate in its meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of paragraph 4.16 of these Standing Orders (Quorum).

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf, shall be delivered to, or sent by post to every Governor, so as to be available to him/her at least 10 working days before the meeting, save in the case of emergencies.
- 4.3.2 Before each meeting of the Council of Governors, a public notice of the time and place of the meeting, and if possible, the public part of the Agenda, shall be displayed at the Trust's headquarters and shall be advertised on the Trust's website at least 10 working days before the meeting, save in the case of emergencies.
- 4.3.3 Want of service of the notice on any Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.
- 4.3.4 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.5 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will be despatched no later than five working days before the meeting, save in the case of emergencies. It is the responsibility of the Chair to ensure that sufficient information is provided to Governors to ensure that rational discussion can take place.
- 4.3.6 In the event of an emergency giving rise to the need for an immediate meeting, failure to comply with the notice periods referred to in this paragraph 4.3 shall not prevent the calling of or invalidate

such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4 Annual Governors Meeting

4.4.1 The Council of Governors shall hold an annual governors meeting of the Council of Governors in every calendar year so that there is no more than fifteen calendar months between one annual governors meeting and the next and shall present to that meeting (in addition to any other requirement):

- (a) The annual accounts
- (b) Any report of the auditor on them
- (c) The annual report including the Quality Report

4.5 Setting the Agenda

4.5.1 The Council of Governors may determine that certain matters shall appear on every Agenda for a meeting and shall be addressed prior to any other business being conducted.

4.5.2 A member of the Council of Governors desiring a matter to be included on an Agenda, including a formal proposition for discussion and voting on at a meeting, shall make his/her request in writing to the Chair via the Associate Director of Corporate Governance/Trust Secretary at least 21 working days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 21 working days before a meeting may be included on the Agenda at the discretion of the Chair.

4.6 Petitions

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

4.7 Chair of Meeting

4.7.1 At any Council of Governors meeting, the Chair, if present, shall preside.

4.7.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Vice Chair shall preside.

4.7.3 If the Vice Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director appointed by the Council of Governors shall preside.

4.8 Agenda

4.8.1 Where a Governor has requested inclusion of a matter on the Agenda in accordance with paragraph 4.5.2 of these Standing Orders above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this paragraph 4.8 shall apply in respect of the proposition.

4.8.2 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.

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

- (a) an amendment to the proposition;
- (b) the adjournment of the discussion or the meeting;
- (c) that the meeting proceed to the next business;
- (d) the appointment of an ad hoc committee to deal with a specific item of business;
- (e) that the motion be now put;
- (f) that the public be excluded from the meeting in relation to the discussion concerning the proposition under paragraph 4.1.1 of these Standing Orders above.

4.8.4 In the case of sub-paragraphs 4.8.3(c) and 4.8.3(e) of these Standing Orders above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.

4.8.5 No amendment to the proposition shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the proposition.

4.9 Report from the Board of Directors

Unless otherwise agreed in writing, at each meeting of the Council of Governors, a member of the Board of Directors is required to report to the Council of Governors on the Trust's general position and delivery of the goals identified in its forward plan unless it is agreed in writing they will not do so.

4.10 **Chair's Ruling**

Statements of Governors made at meetings of the Council of Governors 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.

4.11 **Voting**

4.11.1 A Governor may not vote at a meeting of the Council of Governors unless, within seven working days prior to the commencement of the meeting he/she has made a declaration, in the form prescribed from time to time by the Associate Director of Corporate Governance/Trust Secretary, that he/she is a member of the constituency which elected him/her and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.

4.11.2 Subject to paragraph 4.11.3 of these Standing Orders (or where the Constitution otherwise expressly provides to the contrary), every question at a meeting shall be determined by a majority of votes and whoever is Chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal, have a casting vote.

4.11.3 A resolution for the removal of the Chair or a Non-Executive Director shall be passed only in accordance with the provisions of paragraphs 26.1 and 26.2 of the Constitution.

4.11.4 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

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

4.11.6 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

4.11.7 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote.

4.12 **Minutes**

4.12.1 The Minutes of the proceedings of a meeting shall be drawn up by the Associate Director of Corporate Governance/Trust Secretary or

their nominee and submitted for agreement at the next ensuing meeting where they will be signed by the Chair presiding at it.

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

4.12.3 Minutes of meetings will be taken and circulated in accordance with Governors' wishes.

4.13 Suspension of Standing Orders

4.13.1 Except where this would contravene any statutory provision or any direction made by NHS Improvement, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Governors are present (including one Public Governor and one Staff Governor) and a majority of those present vote in favour of suspension.

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

4.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Governors.

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

4.14 Review of Standing Orders

4.14.1 The Council of Governors shall review its Standing Orders at least every three years.

4.14.2 No amendment to the Standing Orders shall be enacted except in accordance with paragraph 46 of the Constitution.

4.15 Record of Attendance

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

4.16 Quorum

4.16.1 No business shall be transacted at a meeting unless at least one third of the total number of Governors are present with a majority of those present being Public Governors.

4.16.2 If at any meeting there is no quorum present within 30 minutes of the time scheduled for its commencement, the meeting shall stand automatically adjourned for a period of five working days and the

Chair shall give or procure the giving of notice to all Governors of the date, time and place of that adjourned meeting.

4.16.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in paragraph 7 of these Standing Orders, he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5 **LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR**

- 5.1 The Governors shall appoint a Lead Governor and Deputy Lead Governor at the first meeting of the Council of Governors and when the Lead Governor and Deputy Lead Governor's term expires.
- 5.2 Without prejudice to the rights of any Governor to communicate directly with the Chair, the Lead Governor shall be responsible for receiving from Governors and communicating to the Chair any comments, observations and concerns expressed to him/her by Governors other than at meetings of the Council of Governors regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business.
- 5.3 The Deputy Lead Governor shall be responsible for supporting the Lead Governor in his/her role and for performing the responsibilities of the Lead Governor whenever he/she is known to be unavailable.
- 5.4 Each Governor shall communicate any comment, observation or concern which he/she may have to the Lead Governor in the first instance and only to the Deputy Lead Governor if the Lead Governor is known to be unavailable.
- 5.5 These appointments shall be made from those Governors who have been elected as Governors from the Public Constituency.
- 5.6 The Lead Governor and the Deputy Lead Governor so appointed shall hold office for a maximum of two years or their term as a Governor expires (whichever is the earlier) and shall be eligible for re-appointment at the end of his/her first term.
- 5.7 Nominations for appointment as Lead Governor and Deputy Lead Governor shall be sent out no less than six weeks prior to the expiry of the current Lead Governor and Deputy Lead Governor tenure. Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the principal place of business of the Trust addressed to the Associate Director of Corporate Governance/Trust Secretary to arrive by a stipulated date.

- 5.8 There shall be separate forms of nomination for appointment to the position of Lead Governor and the position of Deputy Lead Governor and eligible Governors may be nominated for both positions.
- 5.9 In the event of there being two or more nominations for either appointment a secret postal ballot shall be held of all the Governors with each Governor having one vote for each contested appointment.
- 5.10 The Governor whose nomination receives the largest number of votes for each position shall be appointed.
- 5.11 In the event of an equality of votes the Trust Chair shall have a casting vote.
- 5.12 If a Governor shall receive the largest number of votes for appointment as both Lead Governor and Deputy Lead Governor, that Governor shall be appointed as Lead Governor and the Governor who received the second largest number of votes for the position of Deputy Lead Governor shall be appointed as Deputy Lead Governor
- 5.13 The result of the ballot shall be announced at the meeting.

6 **COMMITTEES**

- 6.1 Subject to such guidance as may be issued by NHS Improvement, the Council of Governors may appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly of the Chair and Governors. Non-governors may attend such meetings, if appropriate, but will not be entitled to vote.
- 6.2 A committee appointed under paragraph 6.1 of these Standing Orders may, if authorised by the Council of Governors, appoint sub-committees consisting wholly of members of the committee.
- 6.3 These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chair" to be read as a reference to the Chair of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.
- 6.4 Each such committee (and any sub-committees they may form) shall have such terms of reference and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by NHS Improvement, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors. Such terms of reference shall have effect as if incorporated into the Standing Orders.

- 6.5 The committees and sub-committees established by the Council of Governors include (without limitation) a Nominations and Remuneration Committee for the Chair and other Non-Executive Directors.
- 6.6 Any committee or sub-committee established under this paragraph 6 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the dispute resolution procedure set out in the Council of Governors Roles and Responsibilities Statement.
- 6.7 The Council of Governors shall approve the appointments to each of the committees and sub-committees which it has formally constituted.
- 6.8 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees of the Board of Directors.
- 6.9 No governor shall be a full member of more than two committees, save for extra-ordinary circumstances where the Council of Governors shall, at a general meeting, approve the membership on an exceptional basis.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

Declaration of Interests

- 7.1 Each Governor shall:
- 7.1.1 avoid situations in which the Governor has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust; and
 - 7.1.2 not accept a benefit from a third party by reason of being a Governor or doing (or not doing) anything in that capacity.
- 7.2 Paragraph 7.1.1 is not infringed if –
- 7.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 7.2.2 the matter has been authorised in accordance with the constitution.
- 7.3 The duty referred to in sub-paragraph 7.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 7.4 In sub-paragraph 7.1.2, “third party” means a person other than –
- 7.4.1 the trust, or
 - 7.4.2 a person acting on its behalf.

- 7.5 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 and the Associate Director of Corporate Governance/Trust Secretary as required by this paragraph 7.
- 7.6 Such a declaration shall be made:
- 7.6.1 at the time of the Governor's election or appointment or within 20 working days thereof, or otherwise as soon as he/she becomes aware of the existence of that interest, and in a form prescribed by the Associate Director of Corporate Governance/Trust Secretary from time to time; and
- 7.6.2 if a Governor is present at a meeting of the Council of Governors and has an interest in any matter which is the subject of consideration, he/she shall as soon as practicable (and before any vote is taken) disclose the fact (and shall complete a declaration form, as prescribed by the Associate Director of Corporate Governance/Trust Secretary from time to time, as soon as possible thereafter).
- 7.7 If a declaration under this paragraph 7 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 7.8 This paragraph 7 does not require a declaration of an interest of which the Governor is not aware.
- 7.9 A Governor need not declare an interest –
- 7.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 7.9.2 if, or to the extent that, the Governors are already aware of it (and an appropriate written declaration has been made to the Associate Director of Corporate Governance/Trust Secretary);
- 7.9.3 if, or to the extent that, it concerns the Governor's election or appointment and has been or is to be considered –
- (a) by a meeting of the Council of Governors, or
- (b) by a committee of the Governors appointed for the purpose under the constitution.
- 7.10 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 7.10.1 of an interest in any company, body or person with which he/she 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; or

7.10.2 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

- 7.11 If a Governor has declared an interest (as described in SO 7.5 but subject to paragraphs 7.8, 7.9 and 7.10) he/she shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that matter is under consideration (unless the Chair determines otherwise). At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 7.12 The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 7.13 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 the Constitution and the SOs to be also an interest of the other.
- 7.14 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.
- 7.15 This SO 7 applies to any committee or sub-committee of the Council of Governors and applies to any member of any such committee or sub-committee (whether or not he/she is also a Governor).

7.16 **Register of Governors**

The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted, which may be the Associate Director of Corporate Governance/Trust Secretary.

7.17 **Register of Governors' Interests**

The Associate Director of Corporate Governance/Trust Secretary shall keep a Register of Interests of Governors which shall contain the names of each Governor, whether he/she has declared any interest, and if so, the interest declared.

8 **STANDARDS OF BUSINESS CONDUCT**

- 8.1 Members of the Council of Governors shall comply with the Trust's Code of Conduct for Governors and any guidance or best practice advice issued by NHS Improvement and will behave in accordance with the seven Nolan principles of behaviour in Public Life.
- 8.2 Members of the Council of Governors shall comply with the Standing Financial Instructions prepared by the Director of Finance, Information and Strategy and approved by the Board of Directors for the guidance of all staff employed by the Trust.

9 **APPOINTMENTS AND RECOMMENDATIONS**

- 9.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of these Standing Orders shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 9.2 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 9.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 9.4 The Chair and every Governor shall disclose to the Associate Director of Corporate Governance/Trust Secretary any relationship between himself/herself and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Associate Director of Corporate Governance/Trust Secretary to report to the Council of Governors any such disclosure made.
- 9.5 On appointment, members of the Council of Governors should disclose to the Council of Governors whether they are related to any other member of the Council of Governors or holder of any office in the Trust.
- 9.6 Where the relationship to a member of the Council of Governors of the Trust is disclosed, SO 7 shall apply.

10 **REMUNERATION AND EXPENSES**

- 10.1 Governors are not to receive remuneration from the Trust for their services as a governor.

- 10.2 The Trust will pay expenses to Governors in accordance with the relevant Trust policies for attendance at General Meetings of the Governors, or any other business authorised by the Associate Director of Corporate Governance/Trust Secretary as being under the auspices of the Council of Governors.
- 10.3 Expenses will be authorised and reimbursed through the Associate Director of Corporate Governance/Trust Secretary's office on receipt of a completed and signed expenses form. Expenses more than three months in arrears will not be authorised.
- 10.4 A summary of expenses paid to Governors will be published in the Annual Report.

11 **RESOLUTION OF DISPUTES**

Dispute Resolution between Board of Directors and Council of Governors

The processes in relation to dispute resolution between the Board of Directors and the Council of Governors will be dealt with in accordance with the Council of Governors Roles and Responsibilities Statement.

12 **MISCELLANEOUS**

- 12.1 The Associate Director of Corporate Governance/Trust Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands his/her responsibilities within these Standing Orders.
- 12.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed annually by the Board of Directors and the Council of Governors.
- 12.3 Unless specified otherwise in these SOs, any written notice required by these SOs shall be deemed to have been served as specified in paragraph 11 of Annex 8.
- 12.4 If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these SOs to the Chair as soon as possible.
- 12.5 A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

12.6 All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a committee shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

- 1 INTRODUCTION
- 2 INTERPRETATION
- 3 THE BOARD OF DIRECTORS
- 4 MEETINGS OF THE TRUST
- 5 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION
- 6 COMMITTEES
- 7 INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS
- 8 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS
- 9 STANDARDS OF BUSINESS CONDUCT
- 10 TENDERING AND CONTRACT PROCEDURE
- 11 CUSTODY OF SEAL AND SEALING OF DOCUMENTS
- 12 SIGNATURE OF DOCUMENTS
- 13 MISCELLANEOUS

1 **INTRODUCTION**

Statutory Framework

- 1.1 Derbyshire Community Health Services NHS Foundation Trust (the “**Trust**”) became a Public Benefit Corporation on 1 November 2014 following authorisation by NHS Improvement pursuant to the National Health Service Act 2006 (the “**2006 Act**”).
- 1.2 The principal place of business of the Trust is at the Trust Headquarters at Ash Green Learning Disability Centre, Ashgate Road, Ashgate, Chesterfield, Derbyshire, S42 7JE
- 1.3 The Trust is governed by the 2006 Act (as amended), its Constitution and the licence granted by NHS Improvement (the “Regulatory Framework”). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 27 of the Constitution requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business.
- 1.4 As a Public Benefit Corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.5 The Standing Orders, Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework. All Directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.
- 1.6 The Trust shall deal with NHS Improvement in an open and co-operative manner and shall promptly notify NHS Improvement of anything relating to the Trust of which NHS Improvement would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any failure on the part of the Trust to meet its obligations under the Regulatory Framework or any financial or performance thresholds which NHS Improvement may specify from time to time.
- 1.7 The Chair, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Nolan Committee, now the Wicks Committee) and that they will adhere to the principles set out within the Independent Commission’s Good Governance Standard for Public Service. They will also ensure that they follow the best practice advice set out in

the NHS Foundation Trust Code of Governance published by NHS Improvement.

Delegation of Powers – Scheme of Delegation

- 1.8 Under the Standing Orders relating to the Arrangements for the Exercise of Functions by Delegation (SO 5) the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an Executive Director, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated Powers are covered in a separate document (the “Scheme of Delegation”). That document (as amended from time to time) has effect as if incorporated into the Standing Orders.

2 INTERPRETATION

- 2.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive and Associate Director of Corporate Governance/Trust Secretary).
- 2.2 Any expression to which a meaning is given in the Constitution or the 2006 Act, or any Regulations or Order made under the Act shall have the same meaning in this interpretation unless the context requires otherwise and in addition:

"2006 Act" means the National Health Service Act 2006, as amended by the Health and Social Care Act 2012

"Accounting Officer" means the Officer responsible for discharging the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act. For this Trust it shall be the Chief Executive

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

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

"Applicant NHS Trust" means Derbyshire Community Health Services NHS Trust

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

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

"Budget" means a resource, expressed in financial terms, proposed by the Board of Directors for the purpose of carrying out, for a specific period, any or all of the functions of the Trust

"Chair" means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chair" shall be deemed to include the Vice Chair or any other Non-Executive Director appointed in accordance with SO 3.7.2(c) if the Chair and Vice Chair are absent from the meeting or are otherwise unavailable

"Chief Executive" means the Chief Executive officer of the Trust

"Constitution" means the Constitution of the Trust, together with the attached Annexes

"Council of Governors" means the Council of Governors as constituted in accordance with the Constitution

"Director" means a member of the Board of Directors appointed in accordance with the Constitution, and includes both Executive and Non-Executive Directors

"Engagement Policy" means the Trust's policy for engagement between the Council of Governors and the Board of Directors (as amended or replaced from time to time)

"Director of Finance, Information and Strategy" means the Chief Finance Officer of the Trust

"Executive Director" means an Executive Director of the Trust

"Funds held on Trust" means those funds which the Trust holds at its date of authorisation, receives on distribution by statutory instrument, accepted under powers derived under paragraph 14(2)(c) of Part 2, Schedule 4 of the 2006 Act and those accepted under Section 47(2)(c) of the 2006 Act. Such funds may or may not be charitable

"Member" means a member of the Trust

"NHS Improvement" is the body corporate previously known as Monitor, as provided by Section 61 of the Health and Social Care Act 2012.

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

"Nominated Officer" means an Officer charged with the responsibility for discharging specific tasks within the Standing Orders and the Standing Financial Instructions

"Non-Executive Director" means a Non-Executive Director of the Trust;

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

"Scheme of Delegation" means the Reservation of Powers to the Board of Directors and Delegation of Powers

"Senior Independent Director" has the meaning ascribed in paragraph A.4.1 of the NHS Foundation Trust Code of Governance published as best practice advice by NHS Improvement

"SFIs" means Standing Financial Instructions

"Signatures/Sign-off" means both electronic and handwritten versions

"SOs" means these Standing Orders of the Board of Directors

"Trust" means the Derbyshire Community Health Services NHS Foundation Trust

"Trust Headquarters" means Ash Green Learning Disability Centre, Ashgate Road, Ashgate, Chesterfield, Derbyshire, S42 7JE

"Trust Secretary" means a person appointed by the Trust (jointly by the Chief Executive and the Chair) to be the Trust Secretary whose responsibilities in relation to the Board of Directors are likely to include (without limitation) acting independently of the Board of Directors, providing advice on corporate governance issues to the Board of Directors and the Chair and monitoring the Trust's compliance with the Regulatory Framework and these Standing Orders

"Vice Chair" means a Non-Executive Director appointed by the Council of Governors to undertake the Chair's duties in the event that the Chair is absent for any reason

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

- 2.3 Words importing the singular shall include the plural and vice-versa.

3 **THE BOARD OF DIRECTORS**

- 3.1 All business shall be conducted in the name of the Trust.
- 3.2 All funds received in trust shall be in the name of the Trust as corporate trustee.

- 3.3 In relation to Funds held on Trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 3.4 Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees. Accountability for charitable Funds held on Trust is to be made to the Charity Commission.
- 3.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Delegation and have effect as if incorporated into the SOs.
- 3.6 **Composition of the Board of Directors**
- 3.6.1 In accordance with the Constitution, the Board of Directors is to comprise the following:
- (a) a Non-Executive Chair; and
 - (b) a maximum of seven other Non-Executive Directors.
 - (c) a maximum of seven Executive Directors including:
 - (i) the Chief Executive (who shall be the Accounting Officer);
 - (ii) the Director of Finance, Information and Strategy;
 - (iii) and a maximum of five other Directors, one of whom is a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984), and another of whom is to be a registered nurse or midwife (within the meanings of the Nursing and Midwifery Order 2001, SI 2002/253).
- 3.6.2 Wherever reasonably practicable, at least half of the board shall comprise Non-Executive Directors.
- 3.6.3 The validity of any act is not affected by any vacancy among the Directors or defect in the appointment of a Director.
- 3.6.4 The Board of Directors (in consultation with the Council of Governors) may appoint one of the Independent Non-Executive Directors (other than the Chair) as the Senior Independent Director, for such period not exceeding the remainder of his/her term as a Non-Executive Director as they may specify on appointing him/her. "Independent Non-Executive Director" is a Non-Executive Director who

satisfies the independence criteria set out in paragraph B.1.1 of the NHS Foundation Trust Code of Governance.

- 3.6.5 Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint another Independent Non-Executive Director as Senior Independent Director in accordance with the provisions in SO 3.6.4.
- 3.6.6 The Senior Independent Director shall perform the role set out in the NHS Foundation Trust Code of Governance.

3.7 Register of Directors

3.7.1 In accordance with paragraph 36 of the Constitution, the Trust shall keep and maintain a Register of Directors which shall list:

- (a) the names of the Directors;
- (b) their capacity on the Board of Directors; and
- (c) an address through which they may be contacted, which may be the Associate Director of Corporate Governance/Trust Secretary.

3.7.2 Appointment and Powers of Vice Chair

- (a) For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors may appoint a Non-Executive Director to be Vice Chair for such period, not exceeding the remainder of his/her term as non-executive director, as the Council of Governors may specify on appointing him/her.
- (b) Any Non-Executive Director so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chair in accordance with the provisions of SO 3.7.2(a).
- (c) Where the Chair of the Trust has died or has ceased to hold office, or where he/she has been unable to perform his/her duties as Chair owing to illness or any other cause, the Vice Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his/her duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as

there is no Chair able to perform his/her duties, be taken to include references to the Vice Chair. Where both the Chair and Vice Chair are unable to perform their duties owing to illness, conflict of interest or any other cause, another Non-Executive Director will be selected by the members of the Board of Directors present to be the "Acting Chair" of the Trust until such time as the Chair or (as the case may be) the Vice Chair is able to discharge his/her functions as Chair, or a new Chair is appointed by the Council of Governors in accordance with paragraph 21 of the Constitution.

4 **MEETINGS OF THE TRUST**

4.1 **Admission of the Public and the Press**

- 4.1.1 The meetings of the Board of Directors shall be open to members of the public and press. Members of the public and press may be excluded from a meeting for special reasons.
- 4.1.2 The Chair shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors business shall be conducted without interruption and disruption.
- 4.1.3 Nothing in these SOs shall require the Board of Directors to allow members of the public or representative of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.

4.2 **Calling Meetings**

- 4.2.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 4.2.2 The Chair may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of Directors, has been presented to him/her at the Trust's Headquarters, or if, without so refusing, the Chair does not call a meeting within five working days after such requisition has been presented to him/her at the Trust's Headquarters, such one

third or more members of the Board of Directors may forthwith call a meeting.

4.2.3 The Trust will publicise and hold an annual public meeting, which shall be on or before 30 November every year.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an Officer of the Trust authorised by the Chair to sign on his/her behalf, shall be delivered to every Director, or sent by post to every Director, so as to be available to him/her at least three working days before the meeting.

4.3.2 Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting but failure to serve notice on more than three Directors will invalidate the meeting.

4.3.3 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

4.3.4 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.3.5 In the event of an emergency giving rise to the need for an immediate meeting, SOs 4.3.1 to 4.3.4 shall not prevent the calling of such a meeting without the requisite three working days' notice provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the Agenda for the meeting is restricted to matters arising in that emergency.

4.4 Agendas

4.4.1 Agendas will be sent to members of the Board of Directors three working days before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will be dispatched no later than one working day before the meeting, save in emergency. A notice shall be presumed to have been served one day after posting. Agendas will also be sent to the Council of Governors in accordance with paragraph 32 of the Constitution.

4.4.2 In the event that a meeting of the Board of Directors is to be held in public, a public notice of the time and place of the

meeting, and the public part of the Agenda, shall be displayed at the Trust's Headquarters at least three working days before the meeting.

4.5 Setting the Agenda

4.5.1 The following matters shall appear on every Agenda for a meeting of the Trust and shall be addressed as part of the business being conducted:

- (a) Finance Report;
- (b) Performance Report
- (c) Quality Report

4.5.2 A Director desiring a matter to be included on an Agenda shall make his/her request in writing or via email to the Associate Director of Corporate Governance/Trust Secretary at least 10 working days before the meeting, subject to SO 4.3. Requests made less than 10 working days before a meeting may be included on the agenda at the discretion of the Chair. Agendas will be sent to members of the Board of Directors before the meeting, and supporting papers (whenever possible) shall accompany the Agenda, but will be dispatched no later than three working days before the meeting, save in the case of emergencies. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information.

4.6 Petitions

4.6.1 Where a petition has been received by the Trust, the Chair shall include the petition as an item for the Agenda of the next Board of Directors meeting.

4.7 Chair of Meeting

4.7.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice Chair, if there is one and he/she is present, shall preside. If the Chair and Vice Chair are absent, the Acting Chair (appointed pursuant to paragraph 3.7.2(a)) shall preside.

4.7.2 If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, the Acting Chair (appointed pursuant to paragraph 3.7.2(a)) shall preside.

4.8 Chair's Ruling

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

4.9 Notices of Motions

4.9.1 Subject to the provisions of SO 4.11 and 4.12, a member of the Board of Directors wishing to move or amend a motion shall send a written notice to the Chair.

4.9.2 The notice shall be delivered at least 10 working days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these SOs and the appropriate Regulations. Subject to SO 4.3, this SO shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

4.10 Emergency Motions

Subject to the agreement of the Chair, and subject also to the provision of SO 4.11, a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

4.11 Motions: Procedure at and during a meeting

4.11.1 Who may propose

- (a) A motion may be proposed by the Chair of the meeting or any member of the Board of Directors present. It must also be seconded by another member of the Board of Directors.

4.11.2 Contents of motions

- (a) The Chair may exclude from the debate at his/her discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:
 - (i) the reception of a report;
 - (ii) consideration of any item of business before the Board of Directors;

- (iii) the accuracy of minutes;
- (iv) that the Board of Directors proceed to next business;
- (v) that the Board of Directors adjourn; or
- (vi) that the question be now put.

4.11.3 Amendments to motions

- (a) A motion for amendment shall not be discussed unless it has been proposed and seconded.
- (b) Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board of Directors.
- (c) If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

4.11.4 Rights of reply to motions

(a) Amendments

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

(b) Substantive/original motion

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

(c) Withdrawing a motion

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

4.11.5 Motions once under debate

- (a) When a motion is under debate, no motion may be moved other than:

- (i) an amendment to the motion;
 - (ii) the adjournment of the discussion, or the meeting;
 - (iii) that the meeting proceed to the next business;
 - (iv) that the question should be now put;
 - (v) the appointment of an 'ad hoc' committee to deal with a specific item of business;
 - (vi) a motion under paragraph 4.1.1 resolving to exclude the public (including the press); and
 - (vii) that a member be not further heard.
- (b) In the cases of a motion under SO 4.11.5(a)(iii) or 4.11.5(a)(iv), in the interests of objectivity, such a motion should only be put forward by a member of the Board of Directors who has not taken part in the debate and who is eligible to vote.
- (c) If a motion under SO 4.11.5(a)(iii) or 4.11.5(a)(iv) is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

4.11.6 Motion to Rescind a Resolution

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

4.12 **Voting**

- 4.12.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall always have a second or casting vote
- 4.12.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.12.3 If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.
- 4.12.4 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.12.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.12.6 An Officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

4.13 **Minutes**

- 4.13.1 The minutes of the proceedings of a meeting shall be drawn up by the Associate Director of Corporate Governance/Trust Secretary or nominee and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.
- 4.13.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. Minutes shall be retained in the Associate Director of Corporate Governance/Trust Secretary's office.

4.13.3 Minutes shall be circulated in accordance with Directors' wishes (but must always be sent to the Council of Governors in accordance with paragraph 32 of the Constitution). Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.

4.14 **Suspension of Standing Orders**

4.14.1 Except where this would contravene any statutory provision or any guidance or best practice advice issued by NHS Improvement, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

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

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

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

4.14.5 The Audit and Assurance Committee shall review every decision to suspend SOs.

4.15 **Variation and Amendment of Standing Orders**

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

4.16 **Record of Attendance**

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

4.17 **Quorum**

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

4.17.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

4.17.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 8) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least two Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Nomination and Remuneration Committee).

4.17.4 Where the office of a member of the board is shared jointly by more than one person:

- (a) Either or both may attend or take part in meetings of the board.
- (b) If both are present they must cast one vote if they agree.
- (c) In the case of disagreement no vote shall be cast.
- (d) The presence of either or both persons shall count as one person for the purposes of calculating whether the meeting is quorate.

4.18 **Meetings: Electronic Communication**

4.18.1 In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

4.18.2 A Director in electronic communication with the Chair and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Board of Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he/she has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

4.18.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting

resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.

4.18.4 Meetings held in accordance with this SO are subject to SO 4.17 (Quorum). For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.

4.18.5 The minutes of a meeting held in this way MUST state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

5 **ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

5.1 Subject to paragraph 4.3 of the Constitution, SO 3.5 and such guidance as may be given by NHS Improvement, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of SO 5.4 below, or by an Executive Director or an officer in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

5.2 Notwithstanding the provisions of SO 5.1, the provisions of paragraphs 3.2 to 3.4 of these Standing Orders above apply.

5.3 **Emergency Powers**

The powers which the Board of Directors has retained to itself within these SOs may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

5.4 **Delegation to Committees**

Subject always to paragraph 4.3 of the Constitution, the Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees which it has formally constituted. The Constitution and terms of reference of these committees and sub-committees and their specific executive powers shall be approved by the Board of Directors.

5.5 **Delegation to Officers**

- 5.5.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or joint-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally subject to paragraph 4.3 of the Constitution and shall nominate Officers to undertake the remaining functions for which he/she will still retain accountability to the Board of Directors.
- 5.5.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 5.5.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors or the Director of Finance, Information and Strategy or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements. Outside these statutory requirements the Director of Finance, Information and Strategy shall be accountable to the Chief Executive for operational matters.
- 5.5.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs.

5.6 **Duty to Report Non-Compliance with Standing Orders**

If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these SOs to the Associate Director of Corporate Governance/Trust Secretary as soon as possible.

6 **COMMITTEES**

6.1 **Appointment of Committees**

- 6.1.1 Subject to SO 3.5, paragraph 4.3 of the Constitution and such guidance issued by NHS Improvement, the Board of Directors may and, if directed by NHS Improvement, shall

appoint committees of the Trust consisting wholly or partly of members of the Board of Directors or wholly of persons who are not Directors of the Trust.

- 6.1.2 A committee appointed under SO 6.1.1 may, subject to paragraph 4.3 of the Constitution and such guidance as may be given by NHS Improvement or the Board of Directors, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include members of the Board of Directors) or wholly of persons who are not members of the Trust committee (whether or not they include members of the Board of Directors).
- 6.1.3 The SOs of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, in which case the term "Chair" is to be read as a reference to the Chair of the committee as the context permits, and the term "member" is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Trust, in public.)
- 6.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any relevant legislation and/or regulations, paragraph 4.3 of the Constitution and such guidance or best practice advice issued by NHS Improvement. Such terms of reference shall have effect as if incorporated into the SOs.
- 6.1.5 Where committees are authorised to establish sub-committees they may not delegate Executive powers to the sub-committee unless expressly authorised by the Board of Directors (and subject always to paragraph 4.3 of the Constitution).
- 6.1.6 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. Where the Board of Directors determines, and regulations (and paragraph 4.3 of the Constitution) permit, that persons who are neither Directors nor Officers shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

- 6.1.7 The committees and sub-committees established by the Board of Directors include (without limitation):
- (a) Audit and Assurance Committee;
 - (b) Remuneration and Terms of Service Committee for the Chief Executive and Executive Directors;
 - (c) Mental Health Act Committee.
- 6.1.8 The Board of Directors may also operate as a committee in accordance with SO 6.1.1. Any decisions taken by the Board of Directors in committee (i.e. Seminar meeting of the Board of Directors) must be brought to the next meeting of the Board of Directors.

6.2 Confidentiality

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

7 **INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS**

- 7.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework, the Engagement Policy and in particular in relation to the following matters which are set out specifically within the Constitution.
- 7.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to NHS Improvement.
- 7.3 The Directors are to present to the Council of Governors at the annual governor meeting the Annual Accounts, any report of the Auditor on them and the Annual Report including the Quality Report.

- 7.4 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 42 and 43 of the Constitution is included on the Agenda for a meeting of the Board of Directors.
- 7.5 If the Council of Governors so desires such a matter as described within SO 7.4 to be included on an Agenda item, they shall make their request in writing to the Chair at least 10 working days before the meeting of the Board of Directors, subject to SO 4.3. The Chair shall decide whether the matter is appropriate to be included on the Agenda. Requests made less than 10 working days before a meeting may be included on the Agenda at the discretion of the Chair.

8 **DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

- 8.1 The members of the Board of Directors shall also declare to the Associate Director of Corporate Governance/Trust Secretary any interest that they are required to disclose pursuant to paragraph 34 of the Constitution.
- 8.2 All existing members of the Board of Directors should declare such an interest as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently should do so on appointment.
- 8.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Associate Director of Corporate Governance/Trust Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the SOs and delivering it to the Associate Director of Corporate Governance/Trust Secretary on appointment or as soon thereafter as the interest arises.
- 8.4 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he/she 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.
- 8.5 If a Director has declared an interest in accordance with SO 8.1 above he/she shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that proposed contract is under consideration (unless the Chair determines otherwise). At the time the interests are declared, they should be recorded in the Board of Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

- 8.6 Any travelling or other expenses or allowances payable to a Director in accordance with the Constitution shall not be treated as a pecuniary interest.
- 8.7 Members of the Board of Directors that are shareholders and/or on the board of directors of companies likely or possibly seeking to do business with the NHS should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 8.8 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 the Constitution and the SOs to be also an interest of the other.
- 8.9 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships should also be considered.
- 8.10 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.
- 8.11 SO 8 applies to any committee, sub-committee of the Board of Directors and applies to any member of any such committee or sub-committee (whether or not he/she is also a Director).
- 8.12 **Register of Interests**
- 8.12.1 The Register of Interests shall contain the names of each Director, whether he/she has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.
- 8.12.2 The Associate Director of Corporate Governance/Trust Secretary must amend the appropriate Register of Interests upon receipt of new or amended information as soon as is practical and, in any event, within 14 working days.
- 8.12.3 The Register of Interests will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register of Interests must be provided to Members free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-Members for copies or extracts of the Register of Interests.

8.12.4 The details of Directors' interests recorded in the Register of Interests will be kept up to date by means of a regular review as necessary of the Register of Interests by the Associate Director of Corporate Governance/Trust Secretary during which any changes of interests recently declared will be incorporated.

9 **STANDARDS OF BUSINESS CONDUCT**

9.1 **Policy**

Directors and Officers should comply with the NHS Foundation Trust Code of Governance, the Trust Code of Conduct, the Trust's standing financial instructions, the Nolan principles of public life and any guidance and/or best practice advice issued by NHS Improvement. This section of SOs should be read in conjunction with these documents.

9.2 **Canvassing of, and Recommendations by, Directors in Relation to Appointments**

9.2.1 Canvassing of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.

9.2.2 A Director of the Board of Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this SO shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

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

9.3 **Relatives of Directors or Officers**

9.3.1 Candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

9.3.2 The Directors and every member and Officer of the Trust shall disclose to the Chief Executive any relationship between him/her and a candidate of whose candidature

that member or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

9.3.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other member of the Board of Directors or holder of any office in the Trust.

9.3.4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 8 shall apply.

9.4 **External Consultants**

SO 8 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

10 **TENDERING AND CONTRACT PROCEDURE**

10.1 **Duty to comply with Standing Orders**

The procedure for making all contracts by or on behalf of the Trust shall be clearly set out within the Trust's SFIs (except where SO 4.14 is applied).

11 **CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

11.1 **Custody of Seal**

The common seal of the Trust shall be kept by the Associate Director of Corporate Governance/Trust Secretary in a safe at premises designated by the Trust. The seal shall only be released from the safe to enable it to be affixed to a document in accordance with these Standing Orders.

11.2 **Sealing of Documents**

11.2.1 The Common Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers.

11.2.2 Where it is necessary that a document shall be sealed the seal shall be affixed in the presence of the Associate Director of Corporate Governance/Trust Secretary and a Director duly authorised by the Chief Executive and not also from the originating department and shall be attested by them.

11.2.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance, Information and Strategy (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating Directorate).

11.2.4 Every contract for building and engineering works, which exceeds the sum of £250,000 shall be executed under the common seal of the Trust.

11.3 **Register of Sealing**

An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Audit and Assurance Committee at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

12 **SIGNATURE OF DOCUMENTS**

12.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

12.2 The Chief Executive or Nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

13 **MISCELLANEOUS**

13.1 **Standing Orders to be given to Members and Officers**

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

13.2 **Documents having the standing of Standing Orders**

Standing Financial Instructions and the Scheme of Delegation (as both are amended from time to time) shall have the effect as if incorporated into SOs.

13.3 **Review of Standing Orders**

Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

13.4 **Corporate Documents**

Corporate documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

ANNEX 8 - FURTHER PROVISIONS

1 ELIGIBILITY FOR MEMBERSHIP OF THE TRUST

- 1.1 An individual shall not be eligible to become or continue as a member of the trust if he/she:
- 1.1.1 is under 12 years of age at the date of his/her application or invitation to become a Member (as the case may be);
 - 1.1.2 fails or ceases to fulfil the criteria for membership of any of the Public Constituencies or the Staff Constituency;
 - 1.1.3 he/she is or has been a "relevant offender" for the purposes of the Sexual Offences Act 2003;
 - 1.1.4 has demonstrated aggressive or violent behaviour at any hospital or against any of the trust's employees or other persons who exercise functions for the purposes of the trust and following such behaviour he/she has been asked to leave, has been removed or excluded from any hospital in accordance with the relevant trust policy for withholding treatment from violent/aggressive patients;
 - 1.1.5 has been confirmed as a "vexatious complainant" in accordance with the trust's policy for handling complaints;
or
 - 1.1.6 has previously been removed as a Member of the trust (subject to paragraph 5.6 of this Annex) or another NHS Foundation Trust.
- 1.2 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 14 working days written notice to the Member addressed to him/her at the address given in the register of Members of its intention to remove him/her from the register and that Member has not within that period notified the trust of his/her wish to continue as a Member and provided proof satisfactorily to the trust of his/her continued eligibility. In the event of any dispute the Associate Director of Corporate Governance/Trust Secretary shall refer the matter for dispute resolution in accordance with paragraph 8 of this Annex below and the Associate Director of Corporate Governance/Trust Secretary shall implement the outcome of the dispute resolution.

- 1.3 It is the responsibility of Members to ensure their eligibility and not that of the trust.
- 1.4 All Members of the trust shall be under a duty to notify the Associate Director of Corporate Governance/Trust Secretary of any change in their particulars which may affect their entitlement as a Member.

2 **DETERMINATION OF ELIGIBILITY FOR MEMBERSHIP OF THE PUBLIC CONSTITUENCY**

- 2.1 For the purposes of determining whether an individual lives in the Area of the trust, an individual shall be deemed to do so if:
 - 2.1.1 his/her name appears on the Electoral Roll at an address within the relevant Area of the trust and the trust has no reasonable cause to conclude that the individual is not living at that address; or
 - 2.1.2 the trust is otherwise satisfied that the individual lives in the Area of the trust.
- 2.2 An individual who is a member of the Public Constituency shall cease to be eligible to continue as a Member if he/she ceases to live in the area of the Public Constituency of which he/she is a member.
- 2.3 Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which he/she is a Member he/she shall forthwith advise the trust that he/she is no longer eligible to continue as a Member and the Associate Director of Corporate Governance/Trust Secretary shall forthwith remove his/her name from the register of Members unless the Associate Director of Corporate Governance/Trust Secretary is satisfied that the individual concerned lives in some other area of a Public Constituency of the trust. Where the Associate Director of Corporate Governance/Trust Secretary is satisfied that such an individual now lives in another area of a Public Constituency of the trust he/she shall, if the individual so requests, thereafter treat that individual as a member of that other Public Constituency and amend the register of Members accordingly provided the Associate Director of Corporate Governance/Trust Secretary has given that individual not less than 14 working days' notice of its intention to do so.

3 **DETERMINATION OF ELIGIBILITY FOR MEMBERSHIP OF THE STAFF CONSTITUENCY**

- 3.1 Subject to paragraph 3.2 of this Annex below, a member of a Staff Class will cease to be eligible to be a Member of that Staff Class if

they no longer meet the eligibility requirements of paragraphs 8.1 and 8.2 of the constitution and this Annex.

- 3.2 Notwithstanding paragraph 3.1 of this Annex above, where an individual ceases to be eligible for membership of a Staff Class, but is nevertheless eligible for membership of some other Staff Class then the trust may at its absolute discretion give notice to that Member of its intention to transfer him/her 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 specified amend the register of Members accordingly.

4 APPLICATION OR INVITATION FOR MEMBERSHIP

- 4.1 An individual may become a Member by application to the trust in accordance with this constitution and the provisions of paragraph 4.2 of this Annex below, save in the case of those who are invited by the trust to become a member of a Staff Class of the Staff Constituency in accordance with paragraph 8 of the constitution (and paragraph 4.3 of this Annex).
- 4.2 Where an individual wishes to apply to become a Member of the trust, the following procedure shall apply:
- 4.2.1 the trust shall upon request supply the individual with a form of application for membership in a form determined by the trust;
- 4.2.2 upon receipt of the form of application referred to in paragraph 4.2.1 of this Annex above, duly completed and signed by the applicant (or in the trust's discretion signed on behalf of the applicant) the Associate Director of Corporate Governance/Trust Secretary shall as soon as is reasonable practicable and in any event within 28 working days of receipt of the duly completed form consider the same;
- 4.2.3 unless the applicant is ineligible for membership of the trust or is disqualified from membership, the Associate Director of Corporate Governance/Trust Secretary shall cause his/her name to be entered forthwith on the trust's register of Members and shall give notice in writing to the applicant of that fact;
- 4.2.4 upon the applicant's name being entered on the trust's register of Members the individual shall thereupon become a Member;

4.2.5 the information to be included in the trust's register of Members shall include the following details relating to that member's full name and title;

- (a) his/her date of birth;
- (b) his/her full postal address;
- (c) his/her home telephone number (if any);
- (d) his/her email address (if any);
- (e) the constituency and class of which he/she is a member;
- (f) the date upon which he/she became a member;
- (g) his/her gender and ethnicity,
- (h) his/her affiliation to any health and social care group, and
- (i) record of special interests that member may have to assist the trust to target future communications.

4.3 Where an individual is invited by the trust to become a Member, the following procedure shall apply:

4.3.1 the trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a member of a Staff Class of the Staff Constituency relevant to him/her before inviting him/her to become a Member of the trust and that it has all the information needed to complete the register of Members in accordance with paragraph 4.2.5 of this Annex above;

4.3.2 the trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph 8 of the constitution and if necessary shall request the individual to provide such further information, if any, as it may need to complete the necessary entry in the register of Members;

4.3.3 unless the individual has, within 28 working days of the date upon which the trust dispatches its invitation to him/her to become a Member, advised the trust that he/she does not wish to become a Member, the Associate Director of Corporate Governance/Trust Secretary shall thereupon enter that individual's name on the register of Members and he/she shall thereupon become a Member provided that the trust has been provided with the information, if any, requested pursuant to paragraph 4.3.2 of this Annex above

to enable him/her to complete the relevant entry in the register of Members;

- 4.3.4 if the individual has failed to provide the information requested by the trust within 28 working days of being invited by the trust to provide it in accordance with paragraph 4.3.2 of this Annex above, the trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the register of Members.
- 4.4 No individual who is ineligible or disqualified from membership shall be entered or remain on the register of Members.
- 4.5 For the avoidance of doubt, an individual shall become a Member on the date upon which his/her name is entered on the trust's register of Members and shall cease to be a Member upon the date on which his/her name is removed from the register of Members as provided for in this constitution.
- 4.6 The Associate Director of Corporate Governance/Trust Secretary shall procure that the register of Members and all other registers to be maintained in accordance with this constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the register of Members in particular is reviewed and updated as appropriate and no less often than every 28 working days.

5 EXPULSION FROM MEMBERSHIP OF THE TRUST

- 5.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 5.1.1 any Member may complain to the Associate Director of Corporate Governance/Trust Secretary that another Member has acted in a way detrimental to or contrary to the interests of the trust; and
- 5.1.2 subject to paragraphs 5.2 to 5.6 of this Annex below, if a complaint is made, the Council of Governors will consider the complaint, having taken such steps as it considers appropriate, to ensure that each Member's point of view is heard and may either:
- (a) dismiss the complaint and take no further action; or

- (b) arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.

- 5.2 If a resolution to expel a Member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 5.3 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
- 5.4 If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 5.5 A person expelled from membership will cease to be a Member upon the declaration by the chair of the meeting that the resolution to expel them is carried.
- 5.6 No person who has been expelled from membership is to be re-admitted as a Member except by a resolution of the Council of Governors carried by votes of two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

6 TERMINATION OF MEMBERSHIP

- 6.1 A Member shall cease to be a Member on:
 - 6.1.1 death; or
 - 6.1.2 resignation by notice in writing to the Associate Director of Corporate Governance/Trust Secretary; or
 - 6.1.3 ceasing to fulfil the requirements of paragraphs 7, 8, 9 or 10 of this constitution, as the case may be; or
 - 6.1.4 being disqualified or removed pursuant to paragraphs 1 or 2 of this Annex above, or being expelled pursuant to paragraph 5 of this Annex; or
 - 6.1.5 having moved away, is uncontactable by reasonable means, or it otherwise appears to the Associate Director of Corporate Governance/Trust Secretary that the Member no longer wishes to be a member of the trust and, after enquiries made in accordance with a process approved by

the council of governors, he/she fails to demonstrate that he/she wishes to be a member of the trust.

7 GOVERNORS AND DIRECTORS: COMMUNICATION AND CONFLICT

- 7.1 The Governors and Directors shall comply with the trust's Engagement Policy.
- 7.2 The Engagement Policy will be reviewed in line with the Policy Development Framework in joint meetings of the Council of Governors and Board of Directors.

8 Resolving Disputes about the Entitlement to Membership of the trust and Eligibility for Membership of the Council of Governors

- 8.1 Where an individual is held by the trust to be ineligible and/or disqualified from membership of either the trust or Council of Governors and notifies the trust in writing that he/she wishes to disputes the trust's decision, the matter shall be referred to an independent assessor agreeable to both parties, or in the absence of an agreement within 14 working days of the trust's decision, an independent assessor nominated by the Senior Independent Director as soon as reasonably practicable.
- 8.2 The independent assessor shall:
 - 8.2.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as he/she considers appropriate;
 - 8.2.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which he/she has considered; and
 - 8.2.3 communicate his/her decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

9 INDEMNITY

- 9.1 Members of the Council of Governors, the Board of Directors and the Associate Director of Corporate Governance/Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly.
- 9.2 The trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of

Governors, the Board of Directors and the Associate Director of Corporate Governance/Trust Secretary.

- 9.3 The trust may take out insurance either through the NHS Resolution or otherwise in respect of directors and officers liability, including liability arising by reason of the trust acting as a corporate trustee of an NHS charity.

10 **DISSOLUTION OF THE TRUST**

The trust may not be dissolved except in accordance with the provisions of the 2006 Act.

11 **NOTICES**

- 11.1 Save where a specific provision of the constitution otherwise requires, any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose.
- 11.2 In this paragraph 12, "electronic communication" shall have the meaning set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 11.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 11.1 of this Annex above shall (except where expressly stated otherwise in this constitution) be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.

12 **REMUNERATION AND TERMS OF OFFICE OF THE INITIAL CHIEF EXECUTIVE AND INITIAL EXECUTIVE DIRECTORS**

- 12.1 Pending the establishment of a committee of Non-Executive Directors, the matters referred to at paragraph 35 of the constitution shall be dealt with in accordance with the terms and conditions of the respective officers employed by the Applicant NHS Trust.

13 **DISQUALIFICATION OF DIRECTORS**

- 13.1 A Director will be subject to the disqualification criteria included at paragraph 31 of the constitution and paragraph 13.2 of this Annex below.

- 13.2 A person may not become or continue as a director of the trust if:
- 13.2.1 he/she is or has been a “relevant offender” for the purposes of the Sexual Offences Act 2003;
 - 13.2.2 within the preceding five years been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her;
 - 13.2.3 he/she is a member of the Council of Governors;
 - 13.2.4 he/she is a local authority councillor or director of an NHS Organisation (as defined in Annex 5) unless otherwise agreed by the Board of Directors and the Lead Governor or Deputy Lead Governor having regard to the NHS Foundation Trust Code of Governance;
 - 13.2.5 he/she is a member of a local authority’s Health Improvement and Scrutiny Committee covering health matters;
 - 13.2.6 he/she is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 13.2.7 he/she is a person whose tenure of office as a chair or as a member or director of an NHS body has been terminated on the grounds that his/her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of an interest in accordance with Annex 7;
 - 13.2.8 he/she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
 - 13.2.9 he/she has had his/her name removed (by reason of inefficiency, fraud or unsuitability) in accordance with the NHS (Performers List) Regulations 2013 (as amended or replaced) and has not subsequently had his/her name included in such a list;
 - 13.2.10 he/she has been erased by their professional regulatory body or suspended by their professional regulatory body for a continuous period of more than six months;
 - 13.2.11 in the case of a non-executive director, he/she has refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or

13.2.12 he/she has refused to sign and deliver to the Associate Director of Corporate Governance/Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors, as the same may be in force from time to time.

14 **FURTHER PROVISIONS REGARDING THE AUDITOR**

14.1 An auditor may be—

14.1.1 an officer of the Audit Commission (if appointed by the Council of Governors with the agreement of the Commission),

14.1.2 an individual who is not an officer of the Audit Commission,
or

14.1.3 a firm.

14.2 A person appointed as auditor must be—

14.2.1 eligible for appointment as a statutory auditor (see Part 42 of the Companies Act 2006),

14.2.2 a member of one or more of the bodies listed in section 3(7)(a) to (e) of the Audit Commission Act 1998, or

14.2.3 a member of any other body of accountants approved by NHS Improvement for the purposes of this paragraph.

14.3 Where an officer of the Audit Commission is appointed as auditor, the Audit Commission must charge the trust such fees for his/her services as will cover the full cost of providing them.

15 **FURTHER PROVISIONS REGARDING ACCOUNTS**

15.1 The following shall be made available to the Comptroller and Auditor General for examination at his/her request:

15.1.1 the trust's accounts,

15.1.2 the records relating to them, and

15.1.3 any report of the auditor on them.

15.2 If trustees are appointed under section 51 of the 2006 Act, the Comptroller and Auditor General may also examine—

15.2.1 the accounts kept by the trustees,

- 15.2.2 any records relating to them, and
- 15.2.3 any report of an auditor on them.
- 15.3 In auditing the accounts the auditor must comply with any directions given by NHS Improvement as to the standards, procedures and techniques to be adopted.
- 15.4 In preparing its annual accounts (or in preparing any accounts by virtue of paragraph 25(1A)(a) of Schedule 7 of the 2006 Act) the trust shall comply with any directions given by NHS Improvement with the approval of the Secretary of State as to:
 - 15.4.1 the methods and principles according to which the accounts must be prepared,
 - 15.4.2 the content and form of the accounts.
- 15.5 In determining the form and content of the annual accounts (or of any accounts to be prepared by virtue of paragraph 25(1A)(a) of Schedule 7 of the 2006 Act) NHS Improvement must aim to ensure that the accounts present a true and fair view.
- 15.6 The trust shall:
 - 15.6.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and
 - 15.6.2 send copies of those documents to NHS Improvement within such period as NHS Improvement may direct.
- 15.7 The trust must send to NHS Improvement within such period as NHS Improvement may direct:
 - 15.7.1 a copy of any accounts prepared by the trust by virtue of paragraph 25(1A)(a) of Schedule 7 of the 2006 Act; and
 - 15.7.2 a copy of any report of an auditor on them prepared by virtue of paragraph 25(1A)(b) of Schedule 7 of the 2006 Act.

16 **FURTHER PROVISIONS ABOUT THE ANNUAL REPORTS**

- 16.1 The annual reports must give:
 - 16.1.1 information on any steps taken by the trust to secure that (taken as a whole) the actual membership of any public constituency is representative of those eligible for such membership,

- 16.1.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 17.3 of the constitution,
 - 16.1.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 35.2 and such other procedures as the Trust has on pay,
 - 16.1.4 information on the remuneration of the directors and on the expenses of the governors and the directors,
 - 16.1.5 information on the impact that income received by the trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the trust of goods and services for those purposes,
 - 16.1.6 any other information required by the NHS Foundation Trust Code of Governance, and
 - 16.1.7 any other information NHS Improvement requires.
- 16.2 It is for NHS Improvement to decide:
- 16.2.1 the form of reports;
 - 16.2.2 when the reports must be sent to it;
 - 16.2.3 the periods to which the reports are to relate.

17 **FURTHER PROVISIONS ABOUT INSTRUMENTS**

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

ANNEX 9 – ANNUAL MEMBERS MEETING

1 MEMBERS MEETINGS

- 1.1 The trust shall hold a Members' Meeting for all the Members (called the "Annual Members' Meeting") within eight months of the end of each Financial Year of the trust.
- 1.2 Any Members' Meetings other than the Annual Members' Meeting shall be called a "Special Members' Meeting".
- 1.3 Both the Annual Members' Meetings and Special Members' Meetings shall be open to all Members of the trust, members of the Council of Governors and, members of the Board of Directors, representatives of the trust's Auditors, and to members of the public unless the Council of Governors decides otherwise. The trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the trust to attend any meeting referred to in paragraphs 7.1 and 7.2 of this Annex above.
- 1.4 All Members' Meetings are to be convened by order of the Council of Governors.
- 1.5 At least one of the Directors shall present to the Members at the Annual Members' Meeting:
 - 1.5.1 the annual accounts;
 - 1.5.2 any report of the auditor on them;
 - 1.5.3 the annual report.
- 1.6 The trust shall give notice of all Members' Meetings:
 - 1.6.1 by notice in writing to all Members;
 - 1.6.2 by notice prominently displayed at the trust's headquarters and at all of the trust's hospitals;
 - 1.6.3 by notice on the trust's website; and
 - 1.6.4 to the Council of Governors, the Board of Directors, and to the trust's Auditors

stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the Members' meeting.
- 1.7 The Chair or in his/her absence the Vice Chair shall preside at all Members' Meetings of the trust. If neither the Chair nor the Vice

Chair are present, the Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act that person shall be Chair. If no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chair.