

CONSTITUTION OF COLCHESTER HOSPITAL
UNIVERSITY NHS FOUNDATION TRUST

April 2016

1 Interpretation and definitions

1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act.

1.2 References in this Constitution to any statute or statutory provision shall be deemed to include references to any statute or statutory provision which amends, extends, consolidates or replaces the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made there under and any conditions attaching thereto.

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

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

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

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

1.7 In this Constitution:

the 2006 Act is the National Health Service Act 2006;

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

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. 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 to the 2006 Act;

Annual Members Meeting is defined in paragraph [10](#) of the Constitution;

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

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

Appointed Governors means those Governors appointed by the organisations listed in Part B of Annex 3 (“**Sponsoring Organisations**”);

Audit and Risk Assurance Committee means a committee of the Board of Directors as established pursuant to paragraph [39](#) of this Constitution;

Auditor means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph [38](#) of this Constitution;

Board of Directors (the Board) means the Board of Directors as formally constituted in accordance with the Constitution and consisting of a Chair, and Non-Executive Directors, appointed by the Council of Governors; and the Executive Directors, appointed by the Non-Executive Directors and (except for their own appointment) by the Chief Executive;

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;

Budget Holder means the Director or employee with delegated authority to manage finances (income and expenditure) for a specific area of the organisation;

Chair means the person appointed by the Council of Governors as a member of the Board of Directors, to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The Chair shall have responsibility for the leadership of the Board of Directors and Council of Governors, and who unless otherwise state in the Standing Orders shall chair the meetings of the Board of Directors and Council of Governors. The expressions “the Chair” and “the Chair of the Trust” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable;

Chief Executive means the chief Officer of the Trust who is to be appointed (and removed) by the Non-Executive Directors, and whose appointment is subject to the approval, by vote, of a majority of the Council of Governors present at a Council meeting;

Commissioning means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources;

Committee of the Board of Directors means a committee or joint committee or subcommittee formed or jointly formed by the Board of Directors with specific terms of reference and a chair and membership approved by the Board of Directors;

Committee of the Council of Governors means a committee or joint committee and sub-committee formed or jointly formed by the Council of Governors with specific terms of reference, and a chair and membership approved by the Council of Governors;

Committee Members means persons formally appointed by the Council of Governors or Board of Directors as relevant or jointly with others in relation to joint committees to sit on or to chair specific committees or joint committees or sub-committees;

Company Secretary means a person appointed to provide advice on corporate governance issues to the Board of Directors, the Council of Governors and the Chair and to monitor the Trust's compliance with the law, Standing Orders, the Constitution, statutory provisions and guidance and directions given by Monitor;

Comptroller and Auditor General means the individual engaged in the position of Comptroller and Auditor General to the National Audit Office (UK government department) or its statutory successor from time to time;

Constitution means the constitution of the Trust together with the annexes and appendices attached hereto;

Contracting and Procuring means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets;

Council of Governors means the Council of Governors as formally constituted in accordance with the Trust's Constitution meeting in public (subject as set out in the Constitution) and presided over by a Chair, acting as a collective body. For the avoidance of doubt the term "Council of Governors" shall refer to the whole number of

Elected or Appointed Governors at any point in time, acting as a collective body;

Deputy Chair means the Non-Executive Director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason in accordance with paragraph [26](#) of the Constitution. The Deputy Chair will preside at meetings of the Council of Governors in the absence of the Chair;

Director unless attributed to a specific role or title shall mean a person appointed to the Board of Directors whether Non-Executive (including the Chair) or Executive (including the Chief Executive);

Director of Finance means the chief financial Officer of the Trust;

Elected Governor means a Governor elected in accordance with Part A of Annex 3 and paragraphs [11](#), [12](#) and [13](#) of this Constitution;

Executive Director means a person appointed as an executive Director of the Trust under paragraphs 15 to 19 (inclusive) of Schedule 7 of the 2006 Act and in accordance with paragraphs [22,27](#) and [28](#) of the Constitution and who is an Officer of the Trust;

Financial Year means the period of twelve months beginning with 1 April;

Fit and Proper Persons Regulations means Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

Funds held on trust means those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under Part 11, Chapter 2 of the NHS Act 2006. Such funds may or may not be charitable;

Governor means a member of the Council of Governors whether elected or appointed to the Council of Governors in accordance with the Constitution;

Members means a person whose name has been entered into the Trust's register of Members as a member of the Trust's Public Constituency or the Staff Constituency;

Monitor is the body corporate known as Monitor as provided by section 61 of the 2012 Act;

Motion means a formal proposition to be discussed and voted on during the course of a meeting of the Council of Governors or Board of Directors as relevant;

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

Non-Executive Director means a person appointed as a Non-Executive Director of the Trust under paragraphs 15 to 19 (inclusive) of Schedule 7 of the 2006 Act and in accordance with paragraphs [22](#), [24](#) and [25](#) of the Constitution;

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

Policy means a course or principle of action adopted or proposed by the Board of Directors for and on behalf of the Trust. All Policies agreed by the Board of Directors shall be applicable to the Council of Governors;

Principal Purpose means the purpose set out in Section 43(1) of the 2006 Act;

Public Constituency has the meaning ascribed to it in paragraph [7.2](#) of this Constitution;

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

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

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

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

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

Resolution means a formal expression of opinion or intention as agreed by vote of the Council of Governors or Board of Directors as relevant;

Schedule of Matters Reserved to the Board of Directors means the Trust's reservation of powers to the Board of Directors

Scheme of Delegation means the Trust's delegation of powers from the Board of Directors;

Senior Independent Director shall mean an independent Non-Executive Director of the Board of Directors, appointed by the Board of Directors in consultation with the Council of Governors. The Senior Independent Director will be available to Directors and Governors if they have concerns which fail to be resolved or where contact is inappropriate through normal channels. The Senior Independent Director will lead the Non-Executive Directors in the appraisal of the Chair in consultation with the Council of Governors which has overall responsibility for agreement of the outcomes of the appraisal of the Chair and Non-Executive Directors;

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

Significant Transaction means a transaction or arrangement under which the expenditure attributable to the assets and/or contract associated with the transaction or arrangement is not included in the Trust's strategy or the current Annual Plan, which has been reviewed by the Council of Governors, and the value attributable to the transaction or arrangement exceeds £10million and/or is greater than 5% of the total income of the Trust as set out in the preceding Financial Year's Annual Accounts. For the avoidance of doubt, a Significant Transaction does not include a merger, acquisition, separation or dissolution pursuant to paragraph [43](#) of this Constitution;

Sponsoring Organisations means any organisation, which the Trust has identified it has a close working relation with and which is named

or referred to in Annex 3, Part B of the Constitution as an organisation which is able to appoint a Governor of the Trust;

Staff Constituency has the meaning ascribed to it in paragraph [8.2](#) of this Constitution;

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

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

Standing Orders for the Council of Governors means the Standing Orders set out in Annex 5 of this Constitution and the term "SO" when used in this Constitution shall be construed accordingly;

Trust means the Colchester Hospital University NHS Foundation Trust;

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

2 Name

2.1 The name of the foundation trust is Colchester Hospital University NHS Foundation Trust (the “**Trust**”).

2.2 In this Constitution, certain terms have the specific meanings given to them in paragraph [1](#) above.

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 Without prejudice to the Trust’s Principal Purpose, 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 paragraph [3.3](#) for the purpose of making additional income available in order to better carry on its Principal Purpose.

4 Powers

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

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

4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director, provided that where such a committee includes individuals who are not Directors, the committee shall have a majority of Directors.

5 Membership and Constituencies

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

5.1.1 the Public Constituency ; or

5.1.2 the Staff Constituency.

6 Application for Membership

6.1 Subject as set out in paragraphs [7](#) and [8](#) below an individual who is eligible to become a Member of the Trust may do so on application to the Trust. Where that application has been accepted by the Trust, that individual shall become a Member of the Trust once their name has been entered as such in the Trust's register of Members.

7 Public Constituency

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.

7.2 Those individuals who live in an area specified as a public constituency are referred to collectively as the “**Public Constituency**”.

7.3 For the purpose of this paragraph "live(s) in" means an individual's principal place of residence (i.e. the address where the individual normally resides).

7.4 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 become or continue as a Member of the Trust provided:

8.1.1 that individual is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or

8.1.2 that individual has been continuously employed by the Trust under a contract of employment for at least twelve (12) months.

8.2 Those individuals who are eligible for Membership of the Trust by reason of paragraph [8.1](#) above are referred to collectively as the Staff Constituency.

8.3 The Staff Constituency shall be divided into four (4) 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.

8.4 The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.

8.5 An individual who is:

8.5.1 eligible to become a member of the Staff Constituency; and

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

shall become a Member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency which relates to their primary occupation without an application being made unless that individual informs the Trust that they do not wish to do so.

8.6 Individuals who are eligible to be a member of the Staff Constituency may not become or continue as a member of more than one staff class, and individuals who are eligible to join more than one staff class shall be allocated by the Company Secretary in their absolute discretion to the staff class for which they are primarily employed by the Trust.

9 Restriction on Membership

9.1 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.

9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

9.3 An individual must be at least sixteen (16) years old to become a Member of the Trust.

9.4 A Member shall cease to be a Member if that Member:

9.4.1 resigns by notice to the Company Secretary or the Chief Executive;

9.4.2 ceases to fulfill the requirements of Membership as set out in paragraphs [5](#) to [11](#) of this Constitution;

9.4.3 dies; or

9.4.4 the Council of Governors, having made reasonable enquiries, determines that the Member no longer wishes to be a Member or they cease to be eligible as a Member for whatever reason.

10 Annual Members' Meeting

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

11 Council of Governors— Composition

11.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.

11.2 The composition of the Council of Governors is specified in Annex 3.

11.3 The Elected Governors 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 Part A of Annex 3.

11.4 The Appointed Governors shall be appointed by the organisations listed in Part B of Annex 3 ("**Sponsoring Organisations**") in accordance with the relevant appointment procedure and in such numbers as are detailed in Part B.

12 Council of Governors – Election of Governors

12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time. The Trust shall use the 'first past the post' election method, this where appropriate the alternative rules marked "FPP" (first past the post) must be used.

12.2 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 4.

12.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.

12.4 An election, if contested, shall be by secret ballot.

13 Elected Governors – Arrangements to fill Casual Vacancies

13.1 In the event of a Governor resignation or removal resulting in a vacancy on the Council of Governors, the following will apply:

13.1.1 If the vacancy occurs within six (6) months of the last contested election for the constituency, then the next highest polling candidate from that election (and from the same class as the resigning or removed Governor if the resigning or removed Governor is a member of the Staff Constituency) who is willing to take office, will be invited to fill the seat until the next election at which time the seat will fall vacant and be subject to the normal election process.

13.1.2 If the vacancy occurs within twelve (12) months of the next scheduled election, then the seat will be held vacant until those elections.

13.1.3 In all other circumstances, a by-election will be held. The elected candidate will hold the seat until the next election.

14 Council of Governors - Tenure

14.1 An Elected Governor may hold office for a period of up to three (3) years.

14.2 A Governor shall be eligible for re-election or re-appointment as appropriate at the end of their term.

14.3 Subject to paragraph 14.4 and 14.8 below, a Governor may not hold office for longer than six (6) years.

14.4 The term length of three years and the maximum term of six years for an elected governor may, in exceptional circumstances, be extended by up to 12 months to bring the term for a governor appointed in a by-election into line with the next scheduled governor elections or to vary the timing of an election.

14.5 Where a person has been elected or appointed to be a Governor and becomes disqualified or is removed from office under paragraph [15](#) of the Constitution, that person shall notify the Company Secretary in writing of such disqualification and/or (as the case may be), removal as soon as is practicable and, in any event, within fourteen (14) days of first becoming aware of those matters which rendered that person disqualified or removed.

14.6 An Elected Governor shall cease to hold office if that Governor ceases to be a member of the Constituency or class by which they were elected.

14.7 An Appointed Governor shall cease to hold office if the Sponsoring Organisation of that Governor withdraws its appointment or sponsorship of that Governor or any such appointing body ceases to exist and there is no successor in title to its business.

14.8 Notwithstanding paragraph [14.3](#), any individual may stand for re-election or re-appointment as a Governor provided that a period of two (2) years has passed since the end of that individual's previous six (6) year term as Governor.

14.9 A person may not stand for election as a Governor or be appointed as a Governor in accordance with paragraph 11.4 if their tenure as a governor was terminated following a breach of the Governors' Code of Conduct or other rules relating to the Governors or Council of Governors as determined by the Council of Governors.

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

15.1.3 a person who within the preceding five (5) 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 (3) months (without the option of a fine) was imposed on them;

15.1.4 a person who has within the preceding two (2) years been dismissed, by reason of misconduct, from any paid employment with a health service body (and health service body shall include for the purposes of this paragraph an NHS Foundation Trust);

15.1.5 a person whose tenure of office as the chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the Health Service, for non-attendance at meetings, as a result of regulatory action or for non-disclosure of a pecuniary interest;

15.1.6 a person who is an Executive Director or Non-Executive Director of the Trust, or a governor, non-executive director, chair or chief executive officer of another NHS Foundation Trust;

15.1.7 a person who has had their name removed, by a direction under the 2006 Act from any list prepared under that Act, or has otherwise been suspended or disqualified from any healthcare profession and has now subsequently had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable);

15.1.8 a person who is legally declared as incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;

15.1.9 a person who is in dispute with the Trust may have their period of office as a Governor temporarily suspended by the Board of Directors until the conflict of interest has been resolved;

15.1.10 a person who, as a member of a staff class of the Staff Constituency, has been suspended from duty for whatever reason;

15.1.11 a person who, as a member of a staff class of the Staff Constituency is in receipt of a final written warning under the Trust's disciplinary procedure and the time period for such warning has not expired;

15.1.12 a person who does not agree to (or, having agreed to, fails to) abide by the Governors' Code of Conduct or other rules relating to the Governors and/or Council of Governors as determined by the Council of Governors;

15.1.13 a person who has failed to repay (without good cause) any amount of monies properly owed to the Trust;

15.1.14 a person who is a person on the register of sexual offenders;

15.1.15 a person who is a person identified as a vexatious complainant by the Board of Directors;

15.1.16 a person who is a person involved in physical assault or non-physical assault as defined by the NHS Security Management Service at any of the Trust's hospitals or facilities or against any of the Trust's employees or registered volunteers;

15.1.17 a person who resigns by notice, in writing, to the Company Secretary;

15.1.18 a person who, as a Governor fails to attend any meeting of the Council of Governors for three consecutive meetings, their tenure of the office will be immediately terminated unless the other Governors are satisfied that the absence was due to a reasonable cause and they will be able to start attending meetings of the Governors again within such a period, as the Governors consider reasonable;

15.1.19 a person who, on the basis of disclosures obtained through an application to the Criminal Records Bureau, is considered unsuitable by the Board of Directors;

15.1.20 a person who is a member of the Public Constituency who refuses to sign a declaration in the form specified by the Company Secretary of particulars of their qualification to vote as a Member of the Trust and that they are not prevented from being a member of the Council of Governors; or

15.1.21 a person whose tenure of office as governor of the Trust has been terminated following a breach of the Governors' Code of Conduct or other rules relating to the Governors and/or Council of Governors as determined by the Council of Governors.

15.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.

15.3 Where any of the grounds for disqualification contained in this paragraph [15](#) become applicable to a Governor, that Governor must give notice in writing to the Company Secretary of the ground(s) for disqualification. Where the Governor fails to do so, they shall be removed from membership of the Council of Governors if the Council of Governors so decide.

15.4 Where a Governor is removed from membership of the Council of Governors in accordance with this paragraph [15](#), the Council of Governors (along with independent legal advisers if the Council of Governors consider it necessary) shall consider any appeals against such removal.

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.

16.3 Further provisions about the duties of Governors are set out in Annex 5.

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 [25.1](#) below) or, in their absence, the Deputy Chair of the Board of Directors (appointed in accordance with the provisions of paragraph [26](#) below), or in their absence one of the other Non-Executive Directors of the Trust, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the lead Governor of the Council of Governors (appointed in accordance with paragraph 3.8 of Annex 5) shall chair that part of the meeting.

17.2 The Council of Governors will appoint from amongst its number, a lead Governor. The role and responsibilities and details of tenure for the lead Governor are detailed in paragraphs 3.7 and 3.8 of Annex 5.

17.3 Meetings of the Council of Governors shall be open to members of the public except where the Council of Governors decides otherwise in relation to the whole or part of the meeting because:

17.3.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or other special reasons stated and arising from the nature of that business or of the proceedings; or

17.3.2 the meeting involves an educational workshop or seminar that is being held for the planning or personal development of the Governors.

17.4 The provisions of paragraph [17.3](#) shall be without prejudice to the Council of Governors' power, as exercised by the Chair or other Governors, to exclude, suppress or prevent disorderly conduct or other misbehaviour at a meeting.

17.5 The Council of Governors with the approval of the Chair may appoint committees consisting of its members and other persons including Directors to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee with the approval of the Chair.

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

17.7 Further provisions about the Council of Governors meetings are set out in paragraph 4 of Annex 5.

18 Council of Governors – Standing Orders

The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 5.

19 Council of Governors – referral to the Panel

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

19.1.1 to act in accordance with its constitution, or

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

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

20 Council of Governors - Conflicts of Interest of Governors

If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest (as defined at paragraph 8 of Annex 5) to the members of the Council of Governors as soon as the Governor becomes aware of it. The Standing Orders for the Council of Governors (paragraph 8, Annex 5) 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 subject to any guidance issued by Monitor.

22 Board of Directors – Composition

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

22.2 The Board of Directors is to comprise:

22.2.1 a Non-Executive Chair;

22.2.2 up to seven (7) other Non-Executive Directors; and

22.2.3 up to seven (7) Executive Directors.

22.3 One of the Executive Directors shall be the Chief Executive.

22.4 The Chief Executive shall be the Accounting Officer.

22.5 One of the Executive Directors shall be the Director of Finance.

22.6 One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dental Practitioner (within the meaning of the Dentists Act 1984).

22.7 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

23 Board of Directors – general duty

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

24 Board of Directors – Qualification for Appointment as a Non-Executive Director

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

24.1.1 they are a member of the Public Constituency (see Annex 1); or

24.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, that person exercises functions for the purposes of that university; and

24.1.3 they are not disqualified by virtue of paragraph [28](#) below.

25 Board of Directors – Appointment and Removal of Chair and other Non-Executive Directors

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

25.2 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 Board of Directors – Appointment of Deputy Chair

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a deputy Chair.

26.2 The Board of Directors shall, following consultation with the Council of Governors appoint one of the Non-Executive Directors as a Senior Independent Director to act in accordance with Monitor's NHS Foundation Trust Code of Governance and the Trust's Standing Orders.

27 Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors

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

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

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

28 Board of Directors – Disqualification

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

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

28.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

28.1.3 a person who within the preceding five (5) years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on them;

28.1.4

28.1.5 in the case of a Non-Executive Director, a person who is no longer a member of the Public Constituency or, where any of the Trust's hospitals includes a medical or dental school provided by a university, that person does not exercise functions for the purpose of that university;

28.1.6 a person who is a member of the Council of Governors;

28.1.7 a person who does not meet the requirements of the "fit and proper persons" regulations

29 Board of Directors – meetings

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

29.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

29.3 Further provisions about the Board of Directors are set out in Annex 6.

30 Board of Directors – Standing Orders

The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 6.

31 Board of Directors - Conflicts of Interest of Directors

31.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:

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

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

31.2 The duty referred to in sub-paragraph [31.1.1](#) is not infringed if –

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

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

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

31.4 In sub-paragraph [31.1.2](#), “third party” means a person other than:

31.4.1 the Trust; or

31.4.2 a person acting on its behalf.

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

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

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

31.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

31.9 A Director need not declare an interest:

31.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

31.9.2 if, or to the extent that, the Directors are already aware of it; or

31.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:

(a) by a meeting of the Board of Directors, or

(b) by a committee of the Directors appointed for the purpose under the Constitution.

32 Board of Directors – Remuneration and Terms of Office

32.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.

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

32.3 On appointment, the duration of a term of office for a Non-Executive Director (including the Chair) shall be three (3) years. Subject to satisfactory appraisal, a Non-Executive Director (including the Chair) may be re-appointed by the Council of Governors for a further full term, without competition, normally

serving a maximum of six (6) years. Exceptionally the Council of Governors may agree to extending the term of office of a Non-Executive Director (including the Chair) by a further twelve (12) months in order to maintain continuity of knowledge and experience within the Board.

32.4 The maximum aggregate period of office of any Non-Executive Director shall not exceed seven (7) years; save that in the event that any Non-Executive Director takes office as Chair after they have been a Non-Executive Director for two (2) or more years, the maximum aggregate period of office for that Non-Executive Director shall not exceed nine (9) years.

33 Registers

33.1 The Trust shall have:

33.1.1 a register of Members showing, in respect of each Member, the constituency to which that Member belongs and, where there are classes within it, the class to which that Member belongs;

33.1.2 a register of members of the Council of Governors

33.1.3 a register of interests of Governors;

33.1.4 a register of Directors; and

33.1.5 a register of interests of the Directors.

34 Admission to and Removal from the Register of Members

34.1 All individuals are automatically added to the register of Members upon acceptance of their membership application by the Trust.

34.2 The Company Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution.

34.3 The Company Secretary is to send to Monitor a list of persons who are elected or appointed as Governors and Directors.

35 Registers – Inspection and Copies

35.1 The Trust shall make the registers specified in paragraph [33](#) above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

35.3.1 they are to be available for inspection free of charge during normal office hours; and

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

35.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

36 Documents available for Public Inspection

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

36.1.1 a copy of the current Constitution,

36.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them, and

36.1.3 a copy of the latest Annual Report.

36.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

36.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.

36.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

36.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

36.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

36.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.

36.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

36.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

36.2.8 a copy of any final report published under section 65I (administrator's final report),

36.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

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

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

36.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

37 Accounts and records

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

37.2 Monitor may, with the approval of the Secretary of State for Health, give directions to the Trust as to the content and form of its accounts.

37.3 The accounts are to be audited by the Auditor.

37.4 The following documents will be made available to the Comptroller and Auditor General for examination at their request:

37.4.1 the accounts;

37.4.2 the records in relation to them; and

37.4.3 any report of the Auditor on them.

37.5 The Trust shall prepare in respect of each Financial Year, Annual Accounts in such form as Monitor may with the approval of the Secretary of State for Health direct.

37.6 Monitor may with the approval of the Secretary of State for Health direct the Trust:

37.6.1 to prepare accounts in respect of such period or periods as may be specified in the direction; and/or

37.6.2 that any accounts prepared by it by virtue of paragraph [37.6.1](#) above are to be audited in accordance with such requirements as may be specified in the direction.

37.7 In preparing its Annual Accounts or in preparing any accounts by virtue of paragraph [37.6.1](#) above, the Trust must comply with any directions given by Monitor with the approval of the Secretary of State for Health as to:

37.7.1 the methods and principles according to which the Annual Accounts must be prepared; and/or

37.7.2 the content and form of the Annual Accounts.

37.8 The Trust must:

37.8.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and

37.8.2 send copies of the Annual Accounts, and any report of the Auditor on them to Monitor within such a period as Monitor may direct.

37.9 The Trust must send a copy of any accounts prepared by virtue of paragraph [37.1](#) above and a copy of any report of the Auditor to Monitor within such a period as Monitor may direct.

37.10 The functions of the Trust referred to in this paragraph [37](#) shall be delegated to the Accounting Officer.

38 Auditor

38.1 The Trust shall have an Auditor.

38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

39 Audit and Risk Assurance Committee

The Trust shall establish a committee of Non-Executive Directors as an audit and risk assurance committee to perform such monitoring, reviewing and other functions as is appropriate.

40 Annual Report, Annual Plans and non-NHS work

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

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

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

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

40.5 Each forward plan must include information about:

40.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and

40.5.2 the income it expects to receive from doing so.

40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub paragraph [40.5.1](#), the Council of Governors must:

40.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its Principal Purpose or the performance of its other functions; and

40.6.2 notify the Board of Directors of the Trust of its determination.

40.7 The Trust may implement a proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the fulfilment of the Principal Purpose only if more than half of the members of Council of Governors of the Trust present and voting approve the implementation of the proposal.

41 Presentation of the annual accounts and reports to the Governors and Members

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

41.1.1 the Annual Accounts;

41.1.2 any report of the Auditor on them; and

41.1.3 the Annual Report.

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

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

42 Instruments

42.1 The Trust shall have a seal.

42.2 The seal shall not be affixed except under the authority of the Board of Directors as outlined in the Trust's Standing Financial Instructions and Standing Orders for the Practice and Procedure of the Board of Directors at Annex 6.

43 Mergers etc. and Significant Transactions

43.1 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.

43.2 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.

44 Amendment of the Constitution

44.1 The Trust may make amendments of its Constitution only if:

44.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and

44.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.

44.2 Amendments made under paragraph [44.1](#) 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.

44.3 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):

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

44.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.

44.4 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.

44.5 Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

annex 1 – THE PUBLIC CONSTITUENCY (Paragraph [7](#))

Name of Constituency (See Note 1 below)	Minimum Number of Members
1. Tendring	50
2. Colchester	50
3. Halstead & Colne Valley	20
4. Rest of Essex	50
5. Suffolk	50

Note 1: For the area to which the above constituencies relate, please refer to the table of catchment area electoral wards and map below.

Catchment Wards for Public Members (See map below for ward reference areas)

Constituency	Wards
1. Tendring	All Wards
2. Colchester	All Wards
3. Halstead & Colne Valley	Braintree District Council Wards included: Bradwell, Silver End and Rivenhall, Bumpstead, Coggeshall and North Feering, Cressing and Stisted, Gosfield and Greenstead Green, Halstead St Andrews, Halstead Trinity, Heddingham and Maplestead, Kelvedon, Stour Valley North, Stour Valley South, The Three Colnes, Three Fields, Upper Colne and Yeldham Wards.
4. Rest of Essex	<p>Remaining Wards of Braintree District Council: Black Notley and Terling, Bocking (North & South), Braintree (Central, East & South), Great Notley and Braintree West, Hatfield Peverel, Panfield, Rayne, Witham (Chipping Hill & Central, North, South and West).</p> <p>All Wards in the following:</p> <p>Basildon District Council Brentwood Borough Council Castle Point Borough Council Chelmsford Borough Council Epping Forest District Council Harlow District Council Maldon District Council Rochford District Council Uttlesford District Council Southend on Sea Unitary Authority Thurrock Unitary Authority</p>
5. Suffolk	<p>Babergh District Council Forest Heath District Council</p>

	<p>Ipswich Borough Council Mid Suffolk Council St Edmundsbury Borough Council Suffolk Coastal District Council Waveney District Council</p>
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ANNEX 1: THE PUBLIC CONSTITUENCY

**Catchment Map for Colchester Hospital University NHS Foundation Trust
showing Local Authority Boundaries and Wards**

ANNEX 1: THE PUBLIC CONSTITUENCY

COUNCILS		
Tendring District Council	Colchester Borough Council	Braintree District Council
Tendring Constituency Electoral Wards	PUBLIC CONSTITUENCY Colchester Constituency Electoral Wards	Halstead & Colne Valley Constituency Electoral Wards
Alresford, Alton Park Thorrington and Frating Ardleigh and Little Bromley Beaumont and Thorpe Bockings Elm Bradfield, Wrabness and Wix Brightlingsea Burrsville Frinton Golf Green Great and Little Oakley Great Bentley Harwich East Harwich East Central Harwich West Harwich West Central Haven Holland and Kirby Homelands Lawford Little Clacton and Weeley Manningtree, Mistley, Little Bentley and Tendring Peter Bruff Pier Ramsey and Parkeston Rush Green St Bartholomews St James St Johns St Marys St Osyth and Point Clear St Pauls Thorrington, Frating, Elmstead and Great Bromley Walton	Great Tey Fordham and Stour West Bergholt and Eight Ash Green Dedham and Langham Mile End Highwoods St John's St Anne's St Andrew's New Town Castle Lexden Prettygate Christchurch Wivenhoe Cross Wivenhoe Quay Harbour Berechurch Shrub End Stanway Copford and West Stanway Marks Tey Birch and Winstree Tiptree West Mersea Pyfleet East Donyland	Bradwell Silver End and Rivenhall Bumpstead Coggeshall and North Feering, Cressing and Stisted Gosfield and Greenstead Green Halstead St Andrews, Halstead Trinity Hedingham and Maplestead, Kelvedon Stour Valley North Stour Valley South The Three Colnes Three Fields Upper Colne Yeldham

ANNEX 1: THE PUBLIC CONSTITUENCY

PUBLIC CONSTITUENCY

Rest of Essex

Basildon District Council

All Wards

Braintree District Council

Black Notley and Terling, Bocking (North & South), Braintree (Central, East & South), Great Notley and Braintree West, Hatfield Peverel, Panfield, Rayne, Witham (Chipping Hill & Central, North, South and West).

Brentwood Borough Council

All Wards

Castle Point Borough Council

All Wards

Chelmsford Borough Council

All Wards

Epping Forest District Council

All Wards

Harlow District Council

All Wards

Maldon District Council

All Wards

Rochford District Council

All Wards

Uttlesford District Council

All Wards

Southend on Sea Unitary Authority

All Wards

Thurrock Unitary Authority

All Wards

PUBLIC CONSTITUENCY

Suffolk

Babergh District Council

All Wards

Forest Heath District Council

All Wards

Ipswich Borough Council

All Wards

Mid Suffolk Council

All Wards

St Edmundsbury Borough Council

All Wards

Suffolk Coastal District Council

All Wards

Waveney District Council

All Wards

ANNEX 2– THE STAFF CONSTITUENCY (Paragraph [8](#))

	Staff Class	Minimum Number of Members
1	The Staff Constituency shall be divided into four (4) classes of staff Members as follows:	
1.1	Medical/Dental Practitioners (includes all doctors with a Trust Contract over 12-months in length)	10
1.2	Nurse/Midwife (includes qualified nurses, midwives and healthcare assistants)	20
1.3	Allied Healthcare Professional/Healthcare Scientists (includes Art Therapists, Podiatrists, Dietiticians, Operating department practitioners, Orthoptists, Occupational Therapists, Physiotherapists, Prostheticians and Orthotists, Psychologists, Psychotherapists, Radiographers, Speech and Language Therapists, Clinical Engineer, Medical Physicist, Clinical/Medical Technologist, Medical Illustrator, Audiological Scientist, Audiologist, Cardiographer, Cardiac Physiologists and Cardiac Clinical Scientific Officers, Gastroenterology Technician, Hearing Therapist, Neurophysiology Technician, Anatomical Pathology Technician, Clinical Embryologist, Cervical Cytoscreener, Medical Laboratory Assistant, Phlebotomist, Biomedical Scientist, Clinical Cytogeneticist, Molecular Geneticist, Clinical Biochemist, Haematologist, Scientist in Haemostasis and Thrombosis, Clinical Microbiologist, Clinical Scientist in Histocompatibility and Immunogenetics, Clinical Immunologist, Hospital Pharmacist, Community Pharmacist, Pharmacy Technician)	10
1.4	Support Staff (includes all other individuals who are employed by the Trust and who do not fall within the preceding staff classes set out in paragraphs 1.1 to 1.3 above.)	10

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS
(Paragraphs [11.2](#) and [11.3](#))

Part A - Elected Governors

Type of Governor	Number	Elected by
Public	5	Tendring
Public	5	Colchester
Public	3	Halstead & Colne Valley
Public	1	Rest of Essex
Public	1	Suffolk
Staff	1	Medical/Dental Practitioners class
Staff	2	Nurse/Midwife class
Staff	1	Allied Healthcare Professional/Healthcare Scientists
Staff	2	Support

Part B - Appointed Governors

	Number	Nominated by (Sponsoring Organisation)
Local Authority	1	Tendring District Council
	1	Colchester Borough Council
Partnership	1	Essex County Council
Partnership	1	Colchester Garrison
Partnership	1	University of Essex & Anglia Ruskin University (joint nomination)

ANNEX 4 – THE MODEL RULES FOR ELECTIONS (Paragraph [12.2](#))

**ELECTION RULES
FOR THE
COUNCIL OF GOVERNORS**

Model Election Rules

Part 1 – Interpretation

1.	Interpretation	31
----	----------------	----

Part 2 – Timetable for election

2.	Timetable	32
3.	Computation of time	32

Part 3 – Returning officer

4.	Returning officer	33
5.	Staff	33
6.	Expenditure	33
7.	Duty of co-operation	33

Part 4 - Stages Common to Contested and Uncontested Elections

8.	Notice of election	33
9.	Nomination of candidates	33
10.	Candidate's consent and particulars	33
11.	Declaration of interests	34
12.	Declaration of eligibility	34
13.	Signature of candidate	34
14.	Decisions as to validity of nomination papers	34
15.	Publication of statement of nominated candidates	35
16.	Inspection of statement of nominated candidates and nomination papers	35
17.	Withdrawal of candidates	35
18.	Method of election	35

Part 5 – Contested elections

19.	Poll to be taken by ballot	36
20.	The ballot paper	36
21.	The declaration of identity	36

Action to be taken before the poll

22.	List of eligible voters	37
-----	-------------------------	----

23.	Notice of poll	37
24.	Issue of voting documents	37
25.	Ballot paper envelope and covering envelope	37

The poll

26.	Eligibility to vote	38
27.	Voting by persons who require assistance	38
28.	Spoilt ballot papers	38
29.	Lost ballot papers	38
30.	Issue of replacement ballot paper	39
31.	Declaration of identity for replacement ballot papers	39

Procedure for receipt of envelopes

32.	Receipt of voting documents	40
33.	Validity of ballot paper	40
34.	Declaration of identity but no ballot paper	40
35.	Sealing of packets	40

Part 6 - Counting the votes

stv36.	Interpretation of Part 6	41
37.	Arrangements for counting of the votes	42
38.	The count	42
stv39	Rejected ballot papers	42
fpp39	Rejected ballot papers	42
stv40	First stage	43
stv41	The quota	43
stv42	Transfer of votes	44
stv43	Supplementary provisions on transfer	45
stv44	Exclusion of candidates	46
stv45	Filling of last vacancies	47
stv46	Order of election of candidates	48
fpp46	Equality of votes	48

Part 7 – Final proceedings in contested and uncontested elections

fpp47	Declaration of result for contested elections	48
stv47	Declaration of result for contested elections	49
48.	Declaration of result for uncontested elections	49

Part 8 – Disposal of documents

49.	Sealing up of documents relating to the poll	79
50.	Delivery of documents	50
51.	Forwarding of documents received after close of the poll	50
52.	Retention and public inspection of documents	50
53.	Application for inspection of certain documents relating to election	50

	<i>Part 9 – Death of a candidate during a contested election</i>	
fpp54	Countermand or abandonment of poll on death of candidate	51
stv54	Countermand or abandonment of poll on death of candidate	52

Part 10 – Election expenses and publicity

	<i>Expenses</i>	
55.	Expenses incurred by candidates	52
56.	Expenses incurred by other persons	52
57.	Personal, travelling, and administrative expenses	53

	<i>Publicity</i>	
58.	Publicity about election by the corporation	53
59.	Information about candidates for inclusion with voting documents	53
60.	Meaning of “for the purposes of an election”	53

	<i>Part 11 – Questioning elections and irregularities</i>	
61.	Application to question an election	54

	<i>Part 12 – Miscellaneous</i>	
62.	Secrecy	55
63.	Prohibition of disclosure of vote	55
64.	Disqualification	55
65.	Delay in postal service through industrial action or unforeseen event	55

Part 1 – Interpretation

1 Interpretation – (1) In these rules, unless the context otherwise requires -

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

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

“the regulator” means the Independent Regulator for NHS Foundation Trusts (Monitor);
and

“the 2006 Act” means the NHS Act 2006

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

Part 2 – Timetable for election

2 Timetable - The proceedings at an election shall be conducted in accordance with the following timetable.

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

3 Computation of time - (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.

(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 – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5 Staff – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

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

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

7 Duty of co-operation – The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

Part 4 - Stages Common to Contested and Uncontested Elections

8 Notice of election – The returning officer is to publish a notice of the election stating –

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

9 Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

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

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

10 Candidate's particulars – (1) The nomination paper must state the candidate's –

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11 Declaration of interests – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

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

12 Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the board 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 or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13 Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

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

14 Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer–

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

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds –

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

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

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15 Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16 Inspection of statement of nominated candidates and nomination papers– (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

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

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

18 Method of election – (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 board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(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 board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(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 board 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 the returning officer in consultation with the corporation.

Part 5 – Contested elections

19 Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20 The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(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 board of governors to be elected from that constituency, or class within that constituency,

(d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) instructions on how to vote,

(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and

(g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(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) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter is the person to whom the ballot paper was addressed,

- (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22 List of eligible voters – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23 Notice of poll - The returning officer is to publish a notice of the poll stating–

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

24 Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters—

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

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

25 Ballot paper envelope and covering envelope – (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.

(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.

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

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

The poll

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

27 Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

28 Spoilt ballot papers (1) – If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –
 - (a) is satisfied as to the voter's identity, and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers") –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.

29 Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –
 - (a) is satisfied as to the voter's identity,
 - (b) has no reason to doubt that the voter did not receive the original ballot paper, and
 - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers") –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper.

30 Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers") –

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

31 Declaration of identity for replacement ballot papers (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

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

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

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

Procedure for receipt of envelopes

32 Receipt of voting documents – (1) Where the returning officer receives a –

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

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

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

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

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

33 Validity of ballot paper – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

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

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

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

34 Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

35 Sealing of packets – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

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

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

“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 paper –

- (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 stv44(4) below,

“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 stv41 below,

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

38 The count – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
 - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

Stv39. Rejected ballot papers – (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.

(2) The returning officer is to endorse the word “rejected” on any ballot paper

which under this rule is not to be counted.

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by them under each of the subparagraphs (a) to (d) of paragraph (1).

fpp39. Rejected ballot papers – (1) Any ballot paper –

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

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

(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.

(3) A ballot paper on which a vote is marked –

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

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

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(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.

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (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”).

- (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 paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

- (3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

- (4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

- (6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

- (7) The vote on each ballot paper transferred under paragraph (6) shall be at –

- (a) a transfer value calculated as set out in paragraph (4)(b) above, 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.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers 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.

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

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –

- (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.

(3) All ballot papers transferred under rule stv42 or stv44 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 paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

stv44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers

(thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(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.

(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 paragraphs (5) to (10) of rule stv42 and rule stv43.

(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.

(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.

stv45. Filling of last vacancies – (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.

- (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.

- (3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

stv46. Order of election of candidates – (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 stv42(10) above.

- (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 they obtained the quota.

- (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.

- (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.

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections – (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 board of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected—

- (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
- (ii) in any other case, to the chairman of the corporation; and

- (c) give public notice of the name of each candidate whom he or she has declared elected.

(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 fpp39(5),

available on request.

stv47. Declaration of result for contested elections – (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 or she has declared elected –

- (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
- (ii) in any other case, to the chairman of the corporation, and

- (c) give public notice of the name of each candidate who he or she has declared elected.

(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 stv39(1),

available on request.

48. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll – (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

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

(2) The returning officer must not open the sealed packets of –

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

(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.

50. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

51. Forwarding of documents received after close of the poll – Where –

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

- (2) With the exception of the documents listed in rule 53(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.

- (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.

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

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

by any person without the consent of the regulator.

- (2) A person may apply to the regulator to inspect any of the documents listed in (1), and the regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

- (3) The regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

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

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

- (4) On an application to inspect any of the documents listed in paragraph (1), –

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

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

- (i) that his or her vote was given, and
- (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by the returning officer in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- (2) Where a new election is ordered under paragraph (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.
- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to –
- (a) count and record the number of ballot papers that have been received, and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (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.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate – (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 papers 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 papers 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.

- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

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

56 Expenses and payments by candidates - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

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

57. Election expenses incurred by other persons – (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 or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

- (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 58 and 59.

Publicity

58. Publicity about election by the corporation – (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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

(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.

59. Information about candidates for inclusion with voting documents - (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.

(2) The information must consist of –

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

60. Meaning of “for the purposes of an election” - (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.

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

- (3) An application may only be made to the regulator by –
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must –
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- (a) The regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the regulator.
 - (b) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
 - (c) The regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

- (a) the returning officer,
 - (b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –
 - (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
 - (ii) the unique identifier on any ballot paper,
 - (iii) the candidate(s) for whom any member has voted.
- (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.

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

63. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

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

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

65. Delay in postal service through industrial action or unforeseen event – 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 and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the regulator.

ANNEX 5 – sTANDING ORDERS FOR THE PRACTICE AND PROCEDURE
OF THE COUNCIL OF GOVERNORS (Paragraph [18](#))

**STANDING ORDERS
FOR THE PRACTICE AND PROCEDURE OF THE
COUNCIL OF GOVERNORS**

CONTENTS

Paragraph	Page
1 Interpretation and Definitions for Standing Order	60
2 Introduction	60
2.1 Statutory Framework	60
2.2 Council of Governors Framework	61
3 Council of Governors: Composition and Role of Governors	61
3.1 Composition of the Council of Governors	61
3.2 Appointment of Chair and Directors	62
3.3 Terms of Office of the Chair and Non-Executive Directors	62
3.4 Role of Chair	62
3.5 Appointment and Powers of Deputy Chair	62
3.6 Role of Governors	63
3.7 Role of Lead Governor	63
3.8 Selection of Lead Governor	64
3.9 Appointment of Senior Independent Director	64
3.10 Relationship between Council of Governors and Board of Directors	64
4 Meetings of the Council of Governors	65
4.1 Calling of Meetings	65
4.2 Notice of Meetings and the Business to be Transacted	65
4.3 Agenda and Supporting Papers	66
4.4 Notice of Motion	67
4.5 Emergency Motion	67
4.6 Motions: Procedure At and During Meeting	67
4.6.1 Who may propose a Motion	67
4.6.2 Content of Motions	67
4.6.3 Amendments to Motions	67
4.6.4 Rights of reply to Motions	68
4.6.5 Withdrawal of Motions or amendments	68
4.6.6 Motions once under debate	68
4.7 Motion to Rescind a Resolution	69
4.8 Chair's Ruling	69
4.9 Quorum	69
4.10 Voting	69
4.11 Suspension of Standing Orders	70
4.12 Record of Attendance	70
4.13 Minutes	70
4.14 Admission of the Public and Press	71
4.15 Observers at Council of Governors Meetings	72
4.16 Confidentiality	72

5	Appointment of Committees and Sub-Committees	72
6	Arrangements for the Exercise of Functions by Delegation	73
6.1	Delegation Due to Emergency or Urgent Decision	73
6.2	Delegation to Committees	73
6.3	Delegation to a Governor	74
6.4	Duty to Report non-Compliance with Standing Orders	74
7	Overlap with Other Trust Policy Statements, Procedures and Regulations	74
7.1	Specific Policy Statements and Guidance	74
8	Duties and Obligations of Governors under these Standing Orders	74
8.1	Declaration of Interests	74
8.2	Register of Interests	76
8.3	Exclusion of the Chair of the Council of Governors or a Governor in Proceedings on Account of a Pecuniary Interest	77
8.4	Standards of Business Conduct	78
9	Resolution of Disputes with the Board of Directors	79
10	Changes to the Council of Governors' Standing Orders	80
11	Review of the Council of Governors' Standing Orders	80
12	Disqualification from Governorship	80
13	Remuneration and Payments of Expenses	83
14	Disqualification from Membership	83

1 INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

1.1 Save as permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they shall be advised by the Company Secretary or the Trust's legal adviser).

1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.

1.2 The provisions of paragraphs [1.1](#) to [1.7](#) of the Constitution apply to these SOs, save that any reference to "Constitution " shall be read as a reference to these "SOs".

2 INTRODUCTION

2.1 Statutory Framework

2.1.1 The Colchester Hospital University NHS Foundation Trust (the Trust) is a public benefit corporation which was established in accordance with the provisions of the 2006 Act (section 30 (1)). The Trust was authorised by Monitor from 1 May 2008. When Monitor gives Authorisation to an NHS Foundation Trust, then that body ceases to be an NHS Trust and becomes an NHS Foundation Trust. The Establishment Order of Essex Rivers Healthcare NHS Trust was revoked when the Authorisation was issued, by virtue of section 36 of the 2006 Act.

2.1.2 The principal place of business of the Trust is Colchester General Hospital.

2.1.3 The statutory functions conferred on the Trust are mainly set out in Chapter 5 of the 2006 Act, in the Trust's Constitution and in its Authorisation from Monitor

2.1.4 As a public benefit corporation the Trust has specific powers to take any action which appears to be necessary or desirable for the purposes of, or in connection with, its functions. It has the power 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.

2.1.5 The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.

2.1.6 Monitor requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

2.1.7 In addition to the statutory requirement Monitor issues further directions and guidance to which the Trust is subject.

2.2 Council of Governors Framework

2.2.1 These Standing Orders are for the regulation of the Trust's Council of Governors proceedings and business. The Trust's Constitution makes provision for Standing Orders for the practice and procedure of the Council of Governors.

2.2.2 The purpose of the Council of Governors Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings and associated deliberations. The Council of Governors shall at all times seek to comply with the "NHS Foundation Trust Code of Governance", which is founded on "The Combined Code".

2.2.3 All business conducted by the Council of Governors shall be conducted in the name of the Trust. All decisions must be taken objectively and in the interests of the Trust.

2.2.4 The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity based on a recognition that patients come first, is a fundamental value of the Trust. Governors are expected to observe the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

2.2.5 Everything done by the Council of Governors should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

2.2.6 The Council of Governors will in its business be as transparent as it can be about its activities in order to promote confidence between itself, the Membership, the Board of Directors, staff, services users and the public.

3 COUNCIL OF GOVERNORS: COMPOSITION AND ROLE OF GOVERNORS

3.1 Composition of the Council of Governors

3.1.1 The composition of the Council of Governors shall be in accordance with paragraph [11](#) and Annex 3 of the Constitution, however, there may, from time-to-time, be vacant seats on the Council of Governors.

3.1.2 The Council of Governors shall have a Chair. This shall be the Chair of the Trust.

3.1.3 The Chair of the Trust shall be responsible for the leadership of the Council of Governors.

3.1.4 Where the Chair of the Trust is unable to chair the Council of Governors meetings the Chair of the meeting shall be determined in accordance with Standing Orders [3.4](#) and [3.5](#).

3.1.5 The Company Secretary shall be present at all Council of Governors meetings.

3.2 Appointment of the Chair and Directors

3.2.1 The Chair and Non-Executive Directors of the Board of Directors are appointed and removed by the Council of Governors in a general meeting in accordance with the Constitution. The Chief Executive is appointed (and removed) by the Non-Executive Directors, and their appointment is subject to the approval, by vote, of a majority of the Governors present at a Council of Governors Meeting. The Executive Directors are appointed (and removed) by a committee of the Non-Executive Directors and (except for their own appointment) by the Chief Executive.

3.3 Terms of Office of the Chair and Non-Executive Directors

3.3.1 The Chair and Non-Executive Directors of the Board of Directors are to be appointed for a period of office in accordance with the Constitution by the Council of Governors at a general meeting of the Council of Governors.

3.3.2 The Chair and Non-Executive Directors of the Board of Directors may be reappointed by the Council of Governors for a second term following successful appraisal.

3.4 Role of Chair

3.4.1 Appointment and tenure of office of the Chair is defined by the Council of Governors in accordance with the Constitution. The Chair, as a member of the Board of Directors, will lead the Board and ensure it successfully discharges its overall responsibility for the Trust as a whole. They shall have responsibility for

the leadership of the Council of Governors, and, unless otherwise stated in the Standing Orders shall chair the meetings of the Council of Governors. The expression “the Chair of the Trust” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable and the Deputy Chair takes their place

3.5 Appointment and Powers of Deputy Chair

3.5.1 Subject to Standing Order [3.5.2](#) below, the Council of Governors may appoint one of the Non-Executive Directors to be Deputy Chair for such period not exceeding the remainder of their term as a member of the Board of Directors as they specify on appointing them.

3.5.2 Any member so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy Chair in accordance with the provisions of Standing Order [3.5.1](#).

3.5.3 Where the Chair has died or has ceased to hold office or where they are unable to perform their duties as a Chair owing to illness or any other cause, the role of Chair of the Council of Governors shall be carried out by the Deputy Chair of the Board of Directors until a new Chair is appointed or the existing Chair resumes their 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 those duties, be taken to include references to the Deputy Chair.

3.5.4 Subject to the provisions of Standing Order [3.4.1](#) and [3.5.1](#), the Chair of the Trust or in their absence or incapacity the Deputy Chair of the Trust will chair meetings of the Council of Governors. If both are absent one of the Non-Executive Directors of the Board of Directors is to preside at meetings of the Council of Governors

3.5.5 Where during a meeting of the Council of Governors both the Chair and the Deputy Chair declare a conflict of interest and withdraw from the discussion of an agenda item or items, and there is no other Non-Executive Director to act as Chair, it shall be for the Governors present at the meeting to appoint from amongst the Public Constituency a temporary Chair to chair the meeting or part of the meeting. It shall be clearly agreed and minuted those agenda item or items the said temporary Chair shall preside over. Once business on the afore mentioned item or items is concluded, the Chair of the Trust, or Deputy Chair of the Trust, as appropriate, shall resume their duties as Chair of the Council of Governors, and the said temporary Chair will resume their normal role as Governor.

3.6 Role of Governors

3.6.1 The Governors are responsible for representing the views of the Trust's Members and Sponsoring Organisations in the governance of the Trust. Governors must act in the best interests of the Trust and adhere to its values.

3.6.2 The Governors of the Council of Governors must make decisions together and take joint responsibility for them. The extent to which any one Governor or a small group of Governors, is empowered to speak for, or take action on behalf of the Trust or the Council of Governors, must be a matter for the Council of Governors to decide. Such decisions must be recorded fully.

3.7 Role of Lead Governor

3.7.1 To act as a conduit of communication between Monitor and Governors particularly in cases where it may not be appropriate to communicate through the normal channels and also where there is a real risk that a Trust is in significant breach of one or more conditions of its licence and Monitor has significant concerns about the leadership of a Trust.

3.7.2 To act as a conduit of communication between Monitor and Governors when individual Governors have concerns they wish to raise with Monitor.

3.7.3 To contact Monitor on behalf of Governors when there is concern 'that the process of appointment of the Chair or other members of the Board, or elections for Governors, or other material decisions may not have complied with a Trust's Constitution, or alternatively, whilst complying with the Constitution, may be inappropriate'.

3.7.4 To chair meetings of the Council of Governors in circumstances where it may not be considered appropriate for the Chair or another of the Non-Executive Directors to do so, for example when discussing the appointment/removal of the Chair.

3.7.5 The lead Governor should take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action.

3.8 Selection of Lead Governor

3.8.1 The lead Governor role is open to all Governors, including staff and appointees, but not the Chair.

3.8.2 The term of office is twelve months, with no limit to the number of terms being served.

3.8.3 Those wishing to stand can nominate themselves. Those wishing to nominate another Governor should only do so with that person's permission.

3.8.4 The Company Secretary will, every 12 months, request nominations for role of lead Governor.

3.8.5 Subject to the number of candidates for the role the Company Secretary will establish a confidential ballot mechanism to elect the lead Governor.

3.8.6 The lead Governor's contact details shall be provided to Monitor and updated as required.

3.9 Appointment of Senior Independent Director

3.9.1 The Board of Directors shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director in consultation with the Council of Governors. The Senior Independent Director should be available to Directors and Governors if they have concerns which contact through the normal channels of Chair, Chief Executive or Director of Finance has failed to resolve, or for which such contact is inappropriate. The Senior Independent Director will lead the Non-Executive Directors in the appraisal of the Chair in conjunction with the Council of Governors which shall have overall responsibility for agreement of the outcomes of the appraisal of the Chair and Non-Executive Directors.

3.10 Relationship between Board of Directors and Council of Governors

3.10.1 It is the responsibility of the Board of Directors to manage the business of the Trust (in accordance with the Constitution). The powers of the Council of Governors are detailed in the Constitution. The Governors will also represent the views of the members of their constituency and ensure that the needs of the local health community are taken into account when advising on the Trust's strategic direction.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Calling of Meetings

4.1.1 Meetings of the Council of Governors shall be held not less than three times each year, inclusive of an Annual Members' Meeting, at times and places that the Council of Governors may determine. All meetings will be open to the public subject to provisions set out in Standing Order [4.14](#).

4.1.2 When determining the place for meetings, the Council of Governors should have regard for the accommodation of the public and ensure the business of

the Council of Governors can be conducted without interruption and disruption and without prejudice to the power to exclude on grounds of the confidential nature of any business.

4.1.3 Notwithstanding, Standing Order [4.1.1](#) above, the Chair may, in exceptional circumstances, call a meeting of the Council of Governors at any time.

4.1.4 One third or more Governors of the Council of Governors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within fourteen (14) working days after a requisition to do so has been delivered to the Company Secretary, the Governors signing the requisition may forthwith call a meeting.

4.1.5 Any meeting called in accordance with Standing Order [4.1](#) shall subject as set out in these Standing Orders or the Constitution be chaired by the Chair of the Trust and attended by the Company Secretary.

4.1.6 The Council of Governors shall have the right to give prior notice of the requirement for a Director or a representative of the Trust's Auditors to attend any general meeting in order that Governors may raise questions in respect of particular agenda items or other matters that may arise. If a Director is required to attend a Council of Governors meeting it shall be incumbent on the Director to do so.

4.1.7 Members of the public may request that they address a question to the Council of Governors. Questions put forward by members of the public shall relate only to matters on the agenda for the meeting of the Council of Governors at which the question is to be raised. Any member of the public wishing address a question to the Council of Governors shall where possible submit a written notice to the Company Secretary prior to the commencement of the meeting, stating their name and the nature of their question. These questions shall be brought to the attention of the Chair prior to the commencement of the meeting.

4.2 Notice of Meetings and the Business to be Transacted

4.2.1 Save in the case of emergencies or the need to conduct urgent business, a written notice, signed by the Chair of the Trust or by the Company Secretary shall be given at least fifteen (15) clear working days of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website.

4.2.2 A notice shall be presumed to have been served one day after posting or delivery. Lack of service of the notice on any Governor shall not affect the validity of a meeting subject to Standing Order [4.2.3](#) below.

4.2.3 Notwithstanding the above requirement for notice, the Chair may waive notice.

4.2.4 In the case of a meeting called by Governors in default of the Chair as per Standing Order [4.1.4](#) above, those Governors calling the meeting shall sign the notice and no business shall be transacted at the meeting other than that specified in the notice. The notice and an agenda specifying the business to be transacted at it shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such a Governor. Failure to serve such a notice on more than three quarters of the whole number of Governors will invalidate the meeting. A notice shall be presumed to have been served one day after posting or delivery.

4.2.5 No business shall be transacted at the meeting other than that specified on the agenda, or emergency Motions allowed under Standing Order [4.5](#).

4.3 Agenda and Supporting Papers

4.3.1 The Council of Governors will set its own agenda; however there will be items of business, which the Council of Governors is required to consider in order to further the day-to-day business of the Trust. It shall be for either the Chair of the Trust or the Board of Directors to determine when such items will be included on the Council of Governors agendas.

4.3.2 The Council of Governors may determine that certain matters shall appear on every agenda of a meeting of the Council of Governors and may request these be addressed prior to any other business being conducted if appropriate.

4.3.3 A Governor, or Officer of the Trust, desiring a matter to be included on an agenda shall make their request in writing to the Company Secretary at least fifteen (15) clear working days before the meeting for consideration by the Chair. The request should state whether the item of business proposed is to be transacted in the presence of the public, and should include appropriate supporting information. Requests made less than fifteen (15) working days before a meeting may be included on the agenda at the discretion of the Chair or Company Secretary.

4.3.4 Following notice of the meeting, as per Standing Order [4.2.1](#), an agenda for the meeting specifying the business proposed to be transacted at it will be delivered to every Governor, or sent by post to the usual place of residence of such persons, so as to be available to the Governor at least five (5) clear working days before the meeting. Supporting papers, wherever possible, shall accompany the agenda, but will certainly be despatched no later than three (3) clear working days before the meeting, save in emergency.

4.4 Notice of Motion

4.4.1 Subject to the provision of Standing Order [4.6](#) “Motions: Procedure at and during a meeting” and [4.7](#) “Motions to rescind a Resolution”, a Governor desiring to move a Motion shall send a written notice thereof at least fifteen (15) clear working days before the meeting to the Company Secretary who will ensure that it is brought to the immediate attention of the Chair.

4.4.2 The Company Secretary shall include in the agenda for the meeting all notices so received, subject to the notice being in order and permissible under the appropriate regulations. This Standing Order shall not prevent any Motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

4.5 Emergency Motion

4.5.1 Subject to the agreement of the Chair, and subject also to the provision of Standing Order [4.6](#) “Motions: Procedure at and during a meeting”, a Governor may give written notice of an emergency Motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the next meeting. The notice shall state the grounds of urgency. If in order it shall be declared to the Council of Governors at the commencement of the business of the meeting as an additional item included on the agenda. Emergency is defined as a matter, which will adversely affect the Trust in the next seven days. The Chair’s decision to include the item shall be final.

4.6 Motions: Procedure at and During a Meeting

4.6.1 **Who may propose a Motion:** A Motion may be proposed by the Chair or by a Governor present at the meeting and eligible to vote and must be seconded by a Governor present at the meeting and eligible to vote.

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

- (a) the reception of a report;
- (b) consideration of any item of business before the Council of Governors;
- (c) the accuracy of minutes;
- (d) that the Council of Governors proceed to next business;

- (e) that the Council of Governors adjourn;
- (f) that the question be now put.

4.6.3 Amendments to Motions: A Motion for amendment shall not be discussed unless it has been proposed and seconded. Amendments to Motions shall be relevant to the Motion and shall not have the effect of negating the Motion before the Council of Governors. 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.

4.6.4 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 Governor who proposed the substantive Motion shall have the right of reply at the close of any discussions on the Motion.

4.6.5 Withdrawal of Motion or Amendments: A Motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

4.6.6 Motions Once Under Debate: When a Motion is under debate, no Motion may be moved other than:

- (a) An amendment to the Motion;
- (b) The adjournment of the discussion or the meeting;
- (c) That the meeting proceed to the next business;
- (d) That the questions should be now put;
- (e) The appointment of an ad-hoc committee to deal with a specific item of business;
- (f) That the member of the Council of Governors be not further heard.

(g) A Motion resolving to exclude the public, including the press (see Standing Order [4.14](#)):

In those cases where the Motion is either that the meeting proceeds to the ‘next business’ or ‘that the question be now put’ in the interests of objectivity these should only be put forward by a Governor who has not taken part in the debate and who is eligible to vote.

If a Motion to ‘proceed to next business’ or ‘that the question now be put’ is carried, the Chair should give the mover of the substantive Motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

4.7 Motion to Rescind a Resolution

4.7.1 Notice of Motion to rescind any Resolution (or general substance of any Resolution) which has been passed within the preceding six (6) calendar months, shall bear the signature of the Governors who give it and also the signature of four (4) other Governors, of whom at least two (2) shall be Public Governors. Before considering any such Motion of which notice shall have been given, the Council of Governors may refer the matter to any appropriate committee for recommendation.

4.7.2 When any such Motion has been dealt with by the Council of Governors, it shall not be competent for any Governor other than the Chair to propose a Motion to the same effect within six (6) months. This Standing Order shall not apply to Motions moved in pursuance of a report or recommendations of a Committee of the Council of Governors.

4.8 Chair’s Ruling

4.8.1 The decision of the Chair of the meeting, advised by the Company Secretary, on questions of order, relevancy and regularity (including procedure on handling Motions) and their interpretation of the Standing Orders, at the meeting, shall be final.

4.9 Quorum

4.9.1 No business shall be transacted at a meeting of the Council of Governors unless nine (9) or more Governors, including at least five (5) Public Governors, one (1) Staff Governor and one (1) Appointed Governor are present.

4.9.2 If a Governor 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 that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a Resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.9.3 If at any meeting there is no quorum within thirty (30) minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for seven (7) days and upon reconvening, those present shall constitute a quorum.

4.10 Voting

4.10.1 If in the opinion of the Chair a vote should be required on a matter under discussion at a meeting, the result, unless otherwise specified in the Constitution or its Annexes, shall be determined by a majority of votes of Governors present at the meeting and eligible to vote. In the case of any equality in votes, the Chair of the meeting shall have a casting vote.

4.10.2 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 Governors present at the meeting and eligible to vote so request, or the Company Secretary deems it advisable or necessary.

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

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

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

4.11 Suspension of Standing Orders

4.11.1 Except where this would contravene any provision in the Constitution or conditions of its licence, any statutory provision or direction given by Monitor, or the rules relating to the Quorum (Standing Order [4.9](#)) any one or more of these Standing Orders may be suspended at any meeting, provided that at least seventeen (17) or more Governors, including at least nine (9) Public Governors, three (3) Staff Governors and three (3) Appointed Governors are present and eligible to vote.

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

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

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

4.11.5 The Board of Directors' Audit and Risk Assurance Committee shall review every decision to suspend Standing Orders.

4.12 Record of Attendance

4.12.1 Governors must make every effort to attend meetings of the Council of Governors where appropriate and practicable.

4.12.2 Where it is not possible for a Governor to attend apologies should be sent to the Company Secretary no later than three (3) working days prior to the meeting.

4.12.3 The names of all individuals who attended and those who gave apologies for each meeting shall be recorded in the minutes.

4.13 Minutes

4.13.1 The minutes of the proceedings of each meeting of the Council of Governors shall be drawn up and submitted for agreement at the next ensuing meeting, and thereafter 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.

4.13.3 The minutes of the meeting shall be made available to the public, via the Trust's website, except for minutes relating to business conducted when members of the public are excluded under the terms of Standing Order [4.14.1](#).

4.14 Admission of the Public and Press

4.14.1 **Admission and Exclusion on grounds of confidentiality of business to be transacted:** The public shall be afforded facilities to attend all formal meetings of the Council of Governors. However, the Council of Governors may resolve to

exclude members of the public from any meeting or part of a meeting on the grounds that:

- (a) Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted and/or the interests of the Trust or any matters of a personal nature;
- (b) There are special reasons stated in the Resolution and arising from the nature of the business of the proceedings.

the Resolution shall state as follows:

“that representatives of the press and other members of the public be excluded from the [meeting] [remainder of this meeting] having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest or other special reasons.”

4.14.2 General Disturbances: The Chair may exclude any member of the public from the meeting of the Council of Governors if they are interfering with or preventing the proper or reasonable conduct of that meeting.

Where the Council of Governors resolves that the meeting be adjourned in the interests of public order and to allow them to conclude the business in hand in private, the Resolution shall specify the period of any adjournment.

The Resolution shall state as follows:

“That in the interests of public order the meeting adjourn for (period to be specified) to enable the Council of Governors to complete its business without the presence of the public.”

4.14.3 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings: Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Council of Governors or Committee thereof. Such permission shall be granted only upon Resolution of the Council of Governors.

4.15 Observers at Council of Governors Meetings

4.15.1 The right of attendance at meetings by members of the public as referred to in Standing Orders [4.1.1](#) and [4.14.1](#) does not give right to the said members of the public to ask questions or otherwise participate in that meeting, unless invited to do so by the Chair.

4.16 Confidentiality

4.16.1 Matters to be dealt with by the Council of Governors following the exclusion of members of the public shall be confidential to the Council of Governors.

4.16.2 Governors, Directors, Officers or any employee or representative of the Trust in attendance at a private meeting or private part of any meeting, shall not reveal or disclose the contents of the papers, discussions or minutes of the items taken in private, outside the Council of Governors meetings without the express permission of the Council of Governors and any such occurrence will be treated as a potential breach of the relevant Governor / Director Code of Conduct.

5 APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

5.1 Subject to such directions as may be given by Monitor, the Council of Governors may and, if directed by Monitor, shall appoint committees or joint committees of the Council of Governors consisting wholly or partly of Governors.

5.2 A committee or joint committee appointed under Standing Order [5.1](#) may, subject to such directions as may be given by Monitor or the Council of Governors, appoint subcommittees consisting wholly or partly of members of the committee.

5.3 These Standing Orders in their entirety, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees so established by the Council of Governors and to any sub-committees which the Council of Governors authorises to be established. In which case the term “Chair” is to be read as a reference to the Chair of other committee as the context permits, and the term “member” is to be read as a reference to a member of other committee also as the context permits.

5.4 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 Council of Governors) as the Council of Governors shall agree and shall be in accordance with any legislation and regulation or direction issued by Monitor. Such terms of reference shall have effect as if incorporated into the Standing Orders.

5.5 The Council of Governors shall approve the appointments to each of the committees or sub-committees that it has formally constituted. Where the Council

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

5.6 Committees may not delegate any of their powers unless expressly authorised by the Council of Governors.

5.7 Where the Council of Governors is required to appoint persons to a committee or to undertake statutory functions as required by Monitor, and where such appointments are to operate independently of the Council of Governors or the Board of Directors, such appointments shall be made in accordance with the regulations laid down by the Chief Executive or their nominated Officer or any directions or guidance issued by Monitor from time to time.

5.8 Subject as may be required by Monitor there is no requirement to hold meetings of committees established by the Council of Governors in public.

5.9 The committees, subcommittees and joint committees established by the Council of Governors are:

(a) Council of Governor Standards Committee; and

(b) Appointments and Performance Committee.

See terms of reference for the roles and responsibilities of committees.

5.10 In addition the Council of Governors will establish such other committees and sub-committees as it deems necessary to exercise its functions and in particular the functions at set out at SO [2.2](#).

5.11 For the avoidance of doubt the terms of reference for such joint committees of the Board of Directors and the Council of Governors will be agreed jointly by the Board of Directors and the Council of Governors.

5.12 The Council of Governors may also establish such other committees as required to discharge the Trust's responsibilities.

6 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

6.1 Delegation Due to Emergency or Urgent Decision

6.1.1 The responsibilities which the Council of Governors has may in emergency or for an urgent decision be exercised by the Chair of the Trust after having consulted at least five (5) Elected Governors. Where this has been exercised by the Chair of the Trust this shall be reported to the next formal meeting of the Council of Governors for ratification.

6.2 Delegation to Committees

6.2.1 The Council of Governors shall agree from time to time the delegation of powers to be exercised by other committees or joint committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees and their specific powers shall be approved by the Council of Governors.

6.2.2 For the avoidance of doubt the terms of reference for joint committees of the Board of Directors and the Council of Governors will be agreed jointly by the Board of Directors and the Council of Governors.

6.3 Delegation to a Governor

6.3.1 The Council of Governors may delegate duties to an individual Governor but only under a clear remit approved by the Council of Governors.

6.4 Duty to Report Non-Compliance with Standing Orders

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

7 OVERLAP WITH OTHER TRUST POLICY STATEMENTS, PROCEDURES AND REGULATIONS

7.1 Specific Policy Statements and Guidance

7.1.1 These Standing Orders must be read in conjunction with the following Policy statements, guidance and any other issued by the Secretary of State for Health or Monitor:

- (a) Standards of Business Conduct and Conflicts of Interest Policy;

- (b) Caldicott Guardian 2006
- (c) Human Rights Act 1998;
- (d) Freedom of Information Act 2000

8 DUTIES AND OBLIGATIONS OF GOVERNORS UNDER THESESTANDING ORDERS

8.1 Declaration of Interests

8.1.1 Requirements for Declaring Interests and applicability to Governors: All existing Governors shall declare interests which are pecuniary (which includes monetary) personal or family interests that they have and which are relevant to the Trust. Any Governor elected or appointed subsequently should do so on appointment. A nil return should be submitted as such.

8.1.2 Interests which should be declared pursuant to [8.1.1](#) above include:

- (a) Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies).
- (b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- (d) A position of authority in a charity or Voluntary Organisation in the field of health and social care.
- (e) Any connection with a voluntary or other organisation contracting for NHS Services.
- (f) Any substantial or influential connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to lenders or banks.
- (g) Any other commercial interest in the decision before the meeting.
- (h) Research funding/grants that may be received by an individual or their department.

- (i) Interests in pooled funds that are under separate management.

For the avoidance of doubt, any Governor who comes to know that the Trust has entered into or proposes to enter into a contract in which that Governor or any person connected with the Governor (including those persons who are referred to in Standing Order [8.3](#) and elsewhere) has any pecuniary interest, direct or indirect, the Governor shall declare their interest by giving notice in writing of such fact to the Trust as soon as practicable. A nil return should be submitted as such.

8.1.3 Advice on Interests: If a Governor has any doubt about the relevance of an interest, this should be discussed with the Chair or with the Trust's Secretary.

Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specified that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

8.1.4 Recording of Interests: 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 Council of Governors as soon as they become aware of it.

8.1.5 Publication of Declared Interests in Annual Report: Governors' directorships of companies likely or possibly seeking to do business with the NHS will be published in the Trust's Annual Report.

8.1.6 Conflicts of interest which arise during the course of a meeting: During the course of a Council of Governors meeting, if a conflict of interest is established the Chair or Governor concerned should withdraw from the meeting and play no part in the discussion or decision. (See overlap with Standing Order [8.3](#))

8.2 Register of Interests

8.2.1 The Company Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors. In particular

the Register will include details of all interests (as defined in Standing Order [8.1](#)) which have been declared. Any interests declared by the Chair of the Trust will be recorded in the Board of Director's Register of Interests.

8.2.2 Details of the Register will be kept up to date by the Company Secretary who will ensure that all declarations made are incorporated into the register as they arise or are notified in writing to the Company Secretary by Governors by completion of a declaration form in a format approved by the Board of Directors. An annual review, of the Register in which any changes to interests declared during the preceding twelve (12) months will also be conducted by the Company Secretary

8.2.3 It is the obligation of a Governor to inform the Company Secretary in writing within seven (7) days of becoming aware of the existence of a relevant or material interest. The Company Secretary will amend the Register upon receipt of such notification.

8.2.4 Subject to the requirements of the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004 No. 539) as amended, and the Data Protection Act 1998, the Register will be available for public inspection free of charge. The Chair will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

8.2.5 Copies or extracts of the register must be provided to Members of the Trust free of charge and within a reasonable time period of the request and copies or extracts of the register shall be available only during normal office hours. A reasonable charge may be imposed on non-Members for copies or extracts of the register.

8.3 Exclusion of the Chair of the Council of Governors or a Governor in Proceedings on Account of a Pecuniary Interest

8.3.1 **Definition of Terms Used in Interpreting 'Pecuniary' Interest:** For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order [8](#):

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

“Contract” shall include any proposed contract or other course of dealing;

“Pecuniary Interest” subject to the exceptions set out in the Standing Order, a Governor shall be treated as having an indirect pecuniary interest in a contract if:

- (a) the Governor, or a nominee of theirs, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same; or
- (b) he is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.

8.3.2 Exception to Pecuniary Interests: A person shall not be regarded as having a pecuniary interest in any contract if:

- (a) neither that person nor any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a member, or
- (b) any interest that that person or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract, or
- (c) those securities of any company in which that person (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less. Where this paragraph applies that person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order [8.1.2](#) above.
- (d) Any remuneration, compensation or allowance payable to the Chair or a Governor shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.3.3 Exclusion in Proceedings of the Council of Governors

- (a) Subject to the following provisions of this Standing Order, if the Chair or a Governor of the Council of Governors has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a

meeting of the Council of Governors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

(b) The Council of Governors may exclude the Chair or a Governor from a meeting of the Council of Governors while any contract, proposed contract or other matter in which they have a pecuniary interest is under discussion or decision.

(c) This Standing Order applies to any Committee or sub-committee of the Council of Governors and applies to a Governor or member of any such committee or sub-committee as it applies to an Officer of the Trust.

8.4 Standards of Business Conduct

8.4.1 Trust Policy and National Guidance: Governors must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy.

8.4.2 Canvassing of and Recommendations by Governors in Relation to Appointments

(a) The canvassing of any Governor, directly or indirectly, for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

(b) A Governor shall not solicit for any person any appointment under with the Trust or recommend any person for such appointment; but this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

8.4.3 Relative of Governors

(a) Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to or have any relationship with any Governor or the holder of any office under the Trust. Such a relationship will not bar the candidate from any staff appointment. Inappropriate canvassing for a staff appointment and/or failure to disclose any relationship will be grounds for rejecting an application for staff appointment and, if appointed, render them liable to instant dismissal.

(b) Governors shall disclose to the Company Secretary any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Company Secretary to report to the Board of Directors any such disclosure made.

(c) On appointment, Governors should disclose to the Trust whether they are related to any other Member or holder of any office in the Trust. Where such a relationship is disclosed, the Standing Order [8](#) shall apply.

(d) No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

9 RESOLUTION OF DISPUTES WITH THE BOARD OF DIRECTORS

9.1 Should a dispute arise between the Council of Governors and the Board of Directors then the disputes resolution procedure set out below should be followed.

9.2 The Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, shall first endeavour through discussion with Governors and Directors or appropriate representatives of them, to achieve the earliest possible conclusion, to resolve the matter to the reasonable satisfaction of both parties.

9.3 Failing resolution under Standing Order [9.2](#) above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

9.4 The Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or the Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

9.5 The Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) of the Board of Directors or the Council of Governors as appropriate, shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.

9.6 If, in the opinion of the Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, and following the

further discussions prescribed in Standing Order [9.2](#), there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board of Directors accordingly.

9.7 On the satisfactory completion of this disputes process the Council of Governors shall implement the agreed changes.

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

9.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the terms of its authorisation.

10 CHANGES TO THE COUNCIL OF GOVERNORS' STANDING ORDERS

10.1 Subject to paragraph [44](#) of the Constitution, any changes to these Standing Orders shall also require:

10.1.1 a notice of Motion under Standing Order [4.3](#) has been given; and

10.1.2 at least two thirds of the total number of Governors elected and appointed are present; and

10.1.3 a majority of Governors present and eligible to vote, vote in favour of the amendment; and the variation does not contravene anything in the Constitution, statutory provision or any direction given by Monitor; and

10.1.4 the amendment is agreed by Board of Directors.

11 REVIEW OF THE COUNCIL OF GOVERNORS' STANDING ORDERS

11.1 These Standing Orders will be reviewed annually by the Council of Governors.

12 DISQUALIFICATION FROM GOVERNORSHIP

12.1 The Trust's Constitution identifies the circumstances in which a person may not become or continue to be a Governor. These are reproduced in Standing Order [12.2](#).

12.2 An individual may not become or continue as a member of the Council of Governors if that individual:

12.2.1 In the case of a public or Staff Governor, they cease to be a member of the constituency or class by which they were elected;

12.2.2 In the case of a Governor appointed by a Sponsoring Organisation, the Sponsoring Organisation of that Governor withdraws its appointment or sponsorship of them or any such appointing body ceases to exist and there is not successor in title to its business;

12.2.3 Has been adjudged bankrupt or their estate has been sequestrated and (in either case) has not been discharged;

12.2.4 Has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it;

12.2.5 Has within the preceding five (5) years been convicted in the British Isles of any offence, and a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on them;

12.2.6 Has within the preceding two (2) years been dismissed by reason of misconduct, from any paid employment with a health service body (and health service body shall include NHS Foundation Trusts);

12.2.7 Is a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the Health Service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

12.2.8 Is an Executive or Non-Executive director of the Trust, or a governor, non-executive director, chair or chief executive officer of another NHS Foundation Trust;

12.2.9 Has had their name removed, by a direction under the 2006 Act from any list prepared under that Act, or has otherwise been suspended or disqualified from any healthcare profession and has now subsequently had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable);

12.2.10 Is legally declared as incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;

12.2.11 Is in dispute with the Trust shall have their period of office as a Governor temporarily suspended by the Board of Directors until the conflict of interest has been resolved;

12.2.12 As a member of a staff class of the Staff Constituency, suspended from duty for whatever reason;

12.2.13 As a member of a staff class of the Staff Constituency is in receipt of a final written warning under the Trust's disciplinary procedure and the time period for such warning has not expired;

12.2.14 Does not agree to (or, having agreed to, fails to) abide by the Governors' Code of Conduct or other rules relating to the Governors and/or Council of Governors as determined by the Council of Governors;

12.2.15 A person who has failed to deliver to the Company Secretary a statement in the form required by the Trust confirming acceptance of the Governors' Code of Conduct;

12.2.16 Is a person on the register of sexual offenders;

12.2.17 Is a person identified as a vexatious complainant by the Board of Directors;

12.2.18 Is a person involved in physical assault or non-physical assault as defined by the NHS Security Management Service at any of the Trust's hospitals or facilities or against any of the Trust's employees or registered volunteers;

12.2.19 Resigns by notice, in writing, to the Company Secretary;

12.2.20 As a Governor fails to attend any meeting of the Council of Governors for three (3) consecutive meetings, their tenure of office will be immediately terminated unless the other Governors are satisfied that the absence was due to a reasonable cause and they will be able to start attending meetings of the Governors again within such a period, as they consider reasonable;

12.2.21 Is a person who, on the basis of disclosures obtained through an application to the Criminal Records Bureau, is considered unsuitable by the Board of Directors;

12.2.22 Is a member of the Public Constituency who refuses to sign a declaration in the form specified by the Company Secretary of particulars of their qualification to vote as a Member of the Trust and that they are not prevented from being a member of the Council of Governors; or

12.2.23 Is a person whose tenure of office as governor of the Trust has been terminated following a breach of the Governors' Code of Conduct or other rules relating to the Governors and/or Council of Governors as determined by the Council of Governors.

12.3 Where a person has been elected or appointed to be a Governor and they become disqualified for appointment under Standing Order [12.2](#), they shall notify the Company Secretary in writing of such disqualification.

12.4 If it comes to the notice of the Company Secretary at the time of their appointment or later that the Governor is so disqualified, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect. Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and they shall cease to act as a Governor.

12.5 Where a person has been declared disqualified by the Company Secretary under Standing Order [12.4](#), they may appeal the Company Secretary's decision to the Chair, who in consultation with the Council of Governors and independent legal advisers (if necessary) will consider any appeals made and whose decision on the matter will be final.

12.6 Eligibility to vote in elections for the Council of Governors will apply. Any person who stands for election as a Governor is guilty of an offence if they:

12.6.1 make a declaration under this section which they know to be false in a material particular, or

12.6.2 recklessly make such a declaration which is false in a material particular.

A person guilty of an offence under this Standing Order is liable on summary conviction to a fine not exceeding level 4 on the standard scale of the Definitive Guidelines of the Sentencing Guidelines Council.

13 REMUNERATION AND PAYMENT OF EXPENSES

13.1 Remuneration

13.1.1 Governors are not to receive remuneration.

13.2 Payment of Expenses

13.2.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides.

13.2.2 Expenses will be administered and authorised through the Company Secretary's office. Reimbursement will be on receipt of a completed and signed expenses form, evidenced by receipts.

13.2.3 Reimbursement will only be made where expenditure is supported by original and valid receipt(s) and where a request for reimbursement is made in accordance with Trust procedures.

14 Disqualification from Membership

14.1 A Member shall cease to be a Member if that Member:

14.1.1 resigns by notice to the Company Secretary or the Chief Executive;

14.1.2 ceases to fulfil the requirements of Membership as set out in paragraphs [5](#) to [11](#) of the Constitution;

14.1.3 dies; or

14.1.4 the Council of Governors, having made reasonable enquiries, determines that the Member no longer wishes to be a Member or they cease to be eligible as a Member for whatever reason.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE
OF THE BOARD OF DIRECTORS (Paragraph [30](#))

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

CONTENTS

Paragraph	Page
1 Interpretation and Definitions for Standing Orders	88
2 Introduction	88
2.1 Statutory Framework	88
3 Board of Directors: Composition of Membership, Tenure and Role of Directors	89
3.1 Composition of the Board of Directors	89
3.2 Appointment of the Chair and Directors	90
3.3 Terms of Office of the Chair and Directors	90
3.4 Appointment and Powers of Deputy Chair	90
3.5 Appointment of Senior Independent Director	90
3.6 Joint Directors	91
3.7 Role of Directors	91
3.8 Corporate Role of the Board	92
3.9 Schedule of Matters Reserved to the Board and Scheme of Delegation	92
3.10 Lead Roles for Board Directors	93
3.11 Board of Directors – Disqualification	93
3.12 Relationship between Board of Directors and Council of Governors	93
4 Meetings of the Board of Directors	94
4.1 Calling Meetings	94
4.2 Notice of Meetings and the business to be transacted	94
4.3 Agenda and Supporting Papers	94
4.4 Petitions	95
4.5 Notice of Motion	95
4.6 Emergency Motion	95
4.7 Motions: Procedure at and during meeting	95
4.7.1 Who may propose	95
4.7.2 Contents of Motions	95
4.7.3 Amendments to Motions	96
4.7.4 Rights of reply to Motions	96
4.7.5 Withdrawal of a Motion or amendments	96
4.7.6 Motions once under debate	96
4.8 Motion to Rescind a Resolution	97
4.9 Chair of Meeting	97
4.10 Chair's Ruling	97
4.11 Quorum	97
4.12 Voting	98
4.13 Suspension of Standing Orders	98
4.14 Variation and Amendment of Standing Orders	99
4.15 Record of Attendance	99
4.16 Minutes	99
4.17 Admission of public and the press	99
4.18 Observers at Board of Directors' Meetings	100
4.19 Confidentiality	101
5 Appointment of Committees and Sub-Committees	101
5.1 Appointment of Committees	101

5.2	Joint Committees	101
5.3	Applicability of Standing Orders and Standing Financial Instructions to Committees	101
5.4	Terms of Reference	101
5.5	Delegation of Powers by Committees to Subcommittees	102
5.6	Approval of Appointments to Committees	102
5.7	Appointments for Statutory Functions	102
5.8	Committees to be established by the Board of Directors	102
6	Arrangements for the Exercise of Trust Functions by Delegation	103
6.1	Delegation of functions to Committees, Officers or other bodies	103
6.2	Emergency powers and urgent decisions	103
6.3	Delegation to Committees	103
6.4	Delegation to Officers	104
6.5	Schedule of Matters reserved to the Trust and Scheme of Delegation of Powers	104
6.6	Duty to report non-compliance with Standing Orders and Standing Financial Instructions	104
7	Overlap with Other Trust Policy Statements/Procedures, Regulations and Standing Financial Instructions	104
7.1	Policy Statements: General Principles	104
7.2	Specific Policy Statements	105
7.3	Standing Financial Instructions	105
7.4	Specific Guidance	105
8	Duties and Obligations of Board of Directors and Senior Managers under the Standing Orders and Standing Financial Instructions	105
8.1	Declaration of Interests	105
8.1.1	Requirements for Declaring Interests and Applicability to the Board of Directors	105
8.1.2	Interests which are Relevant and Material	105
8.1.3	Advice on Interests	106
8.1.4	Recording of Interests in Board of Directors' Minutes	106
8.1.5	Publication of Declared Interests in Annual Report	107
8.1.6	Conflicts of Interests which arise during the course of a meeting	107
8.2	Register of Interests	107
8.3	Exclusion of the Chair and Directors in Proceedings on Account of a Pecuniary Interest	107
8.3.1	Definition of Terms used in Interpreting "Pecuniary" Interest	107
8.3.2	Exclusion in Proceedings of the Board of Directors	108
8.4	Standards of Business Conduct Policy	109
8.4.1	Trust Policy and National Guidance	109
8.4.2	Interest of Officers in Contracts	109
8.4.3	Canvassing of and recommendations by Directors in relation to Appointments	109
8.4.4	Relatives of Directors or Officers	110
9	Custody of Seal, Sealing of Documents and Signature of Documents	110
9.1	Custody of Seal	110
9.2	Sealing of Documents	110
9.3	Register of Sealing	110
9.4	Signature of Documents	110
10	Resolution of Disputes with the Council of Governors	111

1 INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

1.1 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 they shall be advised by the Company Secretary or the Trust's legal advisor).

1.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the Constitution.

1.3 The provisions of paragraphs [1.1](#) to [1.7](#) of the Constitution apply to these SOs, save that any reference to "Constitution" shall be read as a reference to these "SOs".

2 INTRODUCTION

2.1 Statutory Framework

2.1.1 The Colchester Hospital University NHS Foundation Trust (the Trust) is a public benefit corporation which was established in accordance with the provisions of the 2006 Act (Section 30(1)). The Trust was authorised by Monitor from 1st May 2008. When Monitor gives Authorisation to an NHS Trust, then that body ceases to be an NHS Trust and becomes an NHS Foundation Trust. The Establishment Order of Essex Rivers Healthcare NHS Trust was revoked when the Authorisation was issued, by virtue of Section 36 of the 2006 Act.

2.1.2 The principal place of business of the Trust is Colchester General Hospital.

2.1.3 The statutory functions conferred on the Trust are mainly set out in Chapter 5 of the 2006 Act, in the Trust's Constitution and in its Authorisation from Monitor.

2.1.4 As a public benefit corporation the Trust has specific powers to take any action which appears to be necessary or desirable for the purposes of, or in connection with, its functions. It has the power 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.

2.1.5 The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.

2.1.6 Monitor requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

2.1.7 In addition to the statutory requirements Monitor issues further directions and guidance.

3 THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF DIRECTORS

3.1 Composition of the Membership of the Board of Directors

3.1.1 In accordance with the Constitution, the composition of the Board of Directors shall be:

- (a) a Non-Executive Chair;
- (b) up to seven (7) other Non-Executive Directors; and
- (c) up to seven (7) Executive Directors.

3.1.2 One of the Executive Directors shall be the Chief Executive.

3.1.3 The Chief Executive shall be the Accounting Officer.

3.1.4 One of the Executive Directors shall be the Director of Finance.

3.1.5 One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dental Practitioner (within the meaning of the Dentists Act 1984).

3.1.6 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

3.1.7 The Trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the Trust but any such person will not be a Director of the Trust for the purposes of the 2006 Act (“Statutory Directors”) unless they are appointed in accordance with the Constitution and their title is that of “Executive Director” or “Non-Executive Director.” Persons who are not Executive Directors or Non-Executive Directors will not have the voting rights of a Statutory Director or any power to bind the Trust. These senior staff will not have any rights of attendance at meetings of the Board of Directors or its subcommittees unless expressly invited by the Board or relevant committee.

3.1.8 The Company Secretary will be a senior manager with status and responsibilities equivalent to senior staff. The Company Secretary will attend Board of Directors' meetings. The Company Secretary will be responsible for ensuring that Board procedures are followed and that applicable rules and regulations are complied with. The Company Secretary will advise both the Board of Directors and the Council of Governors on developments in governance issues and ensure that meetings of both committees are held in accordance with the Constitution and that Directors and Governors receive appropriate support and guidance.

3.2 Appointment of the Chair and Directors

3.2.1 The Chair and Non-Executive Directors are appointed and removed by the Council of Governors in a general meeting in accordance with the Constitution. The Chief Executive is appointed (and removed) by the Non-Executive Directors, and their appointment is subject to the approval, by vote, of a majority of the Governors present at a Council of Governors Meeting. The Executive Directors are appointed (and removed) by a committee consisting of the Chair, the Non-Executive Directors and (except for their own appointment) by the Chief Executive.

3.3 Terms of Office of the Chair and Directors

3.3.1 The Chair and Non-Executive Directors are to be appointed for a period of office in accordance with the Constitution by the Council of Governors at a general meeting of the Council of Governors.

3.3.2 The Chair and Non-Executive Directors of the Board of Directors may be reappointed by the Council of Governors for a second term following successful appraisal.

3.3.3 The Executive Directors are to be remunerated and appointed for a period of office as determined by a committee of Non-Executive Directors in accordance with the Constitution.

3.4 Appointment and Powers of Deputy Chair

3.4.1 Subject to Standing Order [3.4.2](#) below, the Council of Governors may appoint one of their Non-Executive Directors to be Deputy Chair for such period not exceeding the remainder of their term as a member of the Board of Directors as they specify on appointing them.

3.4.2 Any member so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors

may thereupon appoint another Non-Executive Director as Deputy Chair in accordance with the provisions of Standing Order [3.4.1](#).

3.4.3 Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their 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 those duties, be taken to include references to the Deputy Chair.

3.5 Appointment of Senior Independent Director

3.5.1 The Board shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director in consultation with the Council of Governors. The Senior Independent Director should be available to Directors and Governors if they have concerns which contact through the normal channels of Chair, Chief Executive, and Director of Finance has failed to resolve, or for which such contact is inappropriate. The Senior Independent Director will lead the Non-Executive Directors in the appraisal of the Chair in consultation with the Council of Governors which has overall responsibility for agreement of the outcomes of the appraisal of the Chair and Non Executive Directors.

3.6 Joint Directors

3.6.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count for the purposes of Standing Order [3.1](#) as one person.

3.6.2 Where the office of an Executive Director of the Board of Directors is shared jointly by more than one person:

- (a) either or both of those persons may attend or take part in meetings of the Board;
- (b) if both are present at a meeting, they should cast one vote if they agree;
- (c) in the case of disagreements, no vote should be cast;

(d) the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order [4.11](#) (Quorum).

3.7 Role of Directors

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

(a) Executive Directors:

Executive Directors of the Board of Directors shall exercise their authority within the terms of these Standing Orders and the Standing Financial Instructions and the Scheme of Delegation.

(b) Chief Executive

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

(c) Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its Directors and for the supervision of financial control and accounting systems. They shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

(d) Non-Executive Directors

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may, however,

exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

(e) Chair

The Chair shall be responsible for the operation of the Board and chair all Board meetings when present. The Chair has certain delegated executive powers. The Chair must comply with the Constitution and with these Standing Orders. The outcomes of the appraisal of the Chair and Non-Executive Directors shall be agreed by the Council of Governors.

The Chair shall liaise with the Council of Governors over the appointment of Non Executive Directors and, once appointed, shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments and their performance.

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

3.8 Corporate Role of the Board

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

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

3.8.3 The powers of the Trust established under the Constitution shall be exercised by the Board of Directors in public session except as otherwise provided for in Standing Order [4](#).

3.8.4 The Board shall define and regularly review the functions it exercises.

3.9 Schedule of Matters Reserved to the Board and Scheme of Delegation

3.9.1 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the “Schedule of Matters Reserved to the Board” and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to Officers and other bodies are contained in the Scheme of Delegation.

3.10 Lead Roles for Board Directors

3.10.1 The Chair will ensure that the designation of lead roles or appointments of Board of Directors as required by the Constitution or as set out in any statutory or other guidance will be made in accordance with that guidance of statutory requirement (e.g., appointing a lead Board Director with responsibilities for Infection Control or Child Protection Services etc.).

3.11 Board of Directors – Disqualification

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

- (a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- (b) a person who has made a composition or arrangement with or granted a trust deed for their creditors and has not been discharged in respect of it;
- (c) a person who within the preceding five (5) years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on them;
- (d) in the case of a Non-Executive Director, a person who is no longer a member of the Public Constituency or, where any of the Trust’s hospitals includes a medical or dental school provided by a university, they do not exercise functions for the purpose of that university;
- (e) a person who is a member of the Council of Governors;
- (f) a person who does not meet the “fit and proper persons” regulations and effective requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5.

3.12 Relationship between Board of Directors and Council of Governors

3.12.1 It is the responsibility of the Board of Directors to manage the business of the Trust (in accordance with the Constitution). The powers of the Council of Governors are detailed in the Constitution. The Governors will also represent the views of the members of their constituency and ensure that the needs of the local health community are taken into account when advising on the Trust's strategic direction.

4 MEETINGS OF THE BOARD OF DIRECTORS

4.1 Calling Meetings

4.1.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such time and places as the Board of Directors may determine. All meetings will be open to public attendance unless the Board of Directors declares otherwise.

4.1.2 The Chair of the Trust may call a meeting of the Board of Directors at any time.

4.1.3 One third or more Directors of the Board of Directors may requisition a meeting in writing. If the Chair refuses or fails to call a meeting within seven (7) days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

4.2 Notice of Meetings and the Business to be Transacted

4.2.1 Before each meeting of the Board of Directors a written notice specifying the business proposed to be transacted shall be delivered to every Director, or sent by post to the usual place of residence of each Director, so as to be available to Directors at least five (5) clear working days before the meeting. The notice shall be signed by the Chair or by an Officer authorised by the Chair to sign on their behalf. Want of service of such a notice on any Director shall not affect the validity of a meeting.

4.2.2 In the case of a meeting called by Directors in default of the Chair calling the meeting, the notice shall be signed by those Directors.

4.2.3 No business shall be transacted at the meeting other than that specified on the Agenda, or emergency Motions allowed under Standing Order [4.6](#).

4.2.4 A Director desiring a matter to be included on an Agenda shall make their request in writing to the Chair at least fifteen (15) clear working days before the meeting. The request should state whether the item of business proposed to be transacted is publicly disclosable or otherwise and should include appropriate

supporting information. Requests made less than fifteen (15) clear working days before a meeting may be included on the Agenda at the discretion of the Chair.

4.2.5 Before any meeting of the Board of Directors 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 principal offices at least three (3) clear working days before the meeting.

4.3 Agenda and Supporting Papers

4.3.1 The Agenda will be sent to Directors five (5) clear working days before the meeting and supporting papers, whenever possible, shall accompany the Agenda but will certainly be despatched no later than three (3) clear working days before the meeting, save in an emergency.

4.4 Petitions

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

4.5 Notice of Motion

4.5.1 Subject to the provision of Standing Orders [4.7](#) "Motions: Procedure at and during a Meeting" and [4.8](#) "Motions to rescind a Resolution", a Director of the Board wishing to move a Motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chair.

4.5.2 The notice shall be delivered at least fifteen (15) clear working days before the meeting. The Chief Executive shall include in the Agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any Motion being withdrawn or moved without notice on any business mentioned on the Agenda for the meeting.

4.6 Emergency Motions

4.6.1 Subject to the agreement of the Chair, and subject also to the provision of Standing Order [4.7](#) "Motions: Procedure at and during a Meeting," a Director of the Board may give written notice of an emergency Motion after the issue of the notice of meeting and Agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the 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.

4.7 Motions: Procedure at and during a Meeting

4.7.1 Who may propose a Motion: A Motion may be proposed by the Chair of the meeting or any Director present. It must also be seconded by another Director.

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

- (a) the reception of a report;
- (b) consideration of any item of business before the Board of Directors;
- (c) the accuracy of minutes;
- (d) that the Board proceed to next business;
- (e) that the Board adjourn;
- (f) that the question be now put.

4.7.3 Amendments to Motions: A Motion for amendment shall not be discussed unless it has been proposed and seconded. Amendments to Motions shall be moved relevant to the Motion and shall not have the effect of negating the Motion before the Board of Directors. 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.

4.7.4 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 Director who proposed the substantive Motion shall have a right of reply at the close of any debate on the Motion.

4.7.5 Withdrawal of a Motion or Amendments: A Motion, or an amendment to a Motion, may be withdrawn.

4.7.6 Motions Once Under Debate: When a Motion is under debate, no Motion may be moved other than:

- (a) an amendment to the Motion;
- (b) the adjournment of the discussion, or the meeting;
- (c) that the meeting proceed to the next business;
- (d) that the question should be now put;
- (e) the appointment of an “ad hoc” committee to deal with a specific item of business;
- (f) that a Director be not further heard;
- (g) a Motion resolving to exclude the public, including the press (see Standing Order [4.17](#)).

In those cases where the Motion is either that the meeting proceeds to the “next business” or “that the question be now put” in the interests of objectivity these should only be put forward by a Director of the Board who has not taken part in the debate and who is eligible to vote.

If a Motion to proceed to the next business or that the question be now put is carried, the Chair should give the mover of the substantive Motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

4.8 Motion to Rescind a Resolution

4.8.1 Notice of Motion to rescind any Resolution (or the general substance of any Resolution) which has been passed within the preceding six (6) calendar months shall bear the signature of the Director who gives it and also the signature of three (3) other 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.

4.8.2 When any such Motion has been dealt with by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a Motion to the same effect within six (6) months. This Standing Order shall not apply to Motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

4.9 Chair of Meeting

4.9.1 At any meeting of the Board of Directors the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair (if the Council of Governors has appointed one), if present, shall preside.

4.9.2 If the Chair and Deputy Chair are absent, a Non-Executive Director as the Directors present shall choose shall preside.

4.10 Chair's Ruling

4.10.1 The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling Motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

4.11 Quorum

4.11.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and Directors (including at least one Non-Executive Director and one Executive Director) is present.

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

4.11.3 If the Chair or Director has been disqualified from participating in the discussion on any matter and/or from voting on any Resolution by reason of a declaration of a conflict of interest (see Standing Order [8](#)), that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a Resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.12 Voting

4.12.1 Save as provided in Standing Orders [4.13](#) – Suspension of Standing Orders and [4.14](#) – Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by the majority of the votes of Directors present and voting on the question. In the case of an equal vote, the person presiding (i.e., the Chair of the meeting) shall have a casting vote.

4.12.2 At the discretion of the Chair, all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs

otherwise or it is proposed, seconded and carried that a vote be taken by paper ballot.

4.12.3 If at least one third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).

4.12.4 If a Director so requests, their vote shall be recorded by name.

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 A manager who has been formally appointed to act up for an Executive Director of the Board of Directors 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.

4.12.7 A manager attending the Board of Directors meeting to represent an Executive Director of the Board of Directors during a period of incapacity or temporary absence without formal acting-up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

4.12.8 For the voting rules relating to joint members see Standing Order [3.5](#).

4.13 Suspension of Standing Orders

4.13.1 Except where this would contravene any provision of the Constitution or licence conditions, any statutory provision or direction given by Monitor or the rules relating to the Quorum (Standing Order [4.11](#)), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the Directors of the Board are present (including at least one member who is a Non Executive Director and one Director who is not) and that at least two-thirds of those Directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board of Directors' minutes.

4.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Directors of the Board of Directors.

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

4.13.4 The Audit and Risk Assurance Committee shall review every decision to suspend Standing Orders.

4.14 Variation and Amendment of Standing Orders

4.14.1 Subject to paragraph [44](#) of the Constitution, these Standing Orders shall not be varied unless:

- (a) a notice of Motion under Standing Order [4.5](#) has been given;
- (b) a recommendation of the Chair or Chief Executive is included on the Agenda for the meeting;
- (c) that two-thirds of the Board of Directors are present at the meeting where the variation or amendment is being discussed, and that at least half of the Trust's Non-Executive Directors present vote in favour of the amendment; and
- (d) any variation or amendment does not contravene a statutory provision or direction made by the Secretary of State or Monitor.

4.15 Record of Attendance

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

4.16 Minutes

4.16.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

4.16.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.

4.17 Admission of Public and the Press

4.17.1 Meetings of the Board of Directors shall be held in public unless the Chair in their absolute discretion determines that any meeting of the Board of Directors shall be held in private. (Standing Orders [3.8.3](#) and [4.11](#) refer.) Where meetings are to be held in public, the following will apply:

- (a) Admission and exclusion on grounds of confidentiality of business to be transacted

The public and representatives of the press may attend meetings of the Board of Directors and shall be required to withdraw upon the Board of Directors resolving as follows:

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

(b) General Disturbances

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

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

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

Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press and other members of the public as provided in Standing Orders [4.17.1\(a\)](#) and [4.17.1\(b\)](#) above, shall be confidential to the members of the Board.

Members and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked “In Confidence” or minutes headed “Items Taken in Private” outside of the Trust, without the express permission of the Trust. This

prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

(d) Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings

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

4.18 Observers at Board of Directors' Meetings

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

4.19 Confidentiality

4.19.1 Governors, Directors, Officers or any employee or representative of the Trust in attendance at a private meeting or private part of any meeting, shall not reveal or disclose the contents of the papers, discussions or minutes of the items taken in private, outside the Board of Directors' meetings without the express permission of the Board of Directors and any such occurrence will be treated as a potential breach of the relevant Governor / Director Code of Conduct.

5 APPOINTMENT OF COMMITTEES AND SUBCOMMITTEES

5.1 Appointment of Committees

5.1.1 Subject to such directions as may be given by Monitor, the Board of Directors may appoint committees of the Trust.

5.1.2 The Board of Directors shall determine the membership and terms of reference of committees and subcommittees and shall, if it requires to, receive and consider reports of such committees.

5.2 Joint Committees

5.2.1 Joint committees may be appointed by the Board of Directors by joining together with one or more other health service bodies or with the Council of Governors consisting of wholly or partly of the Chair and Directors of the Trust or other health service bodies, or wholly of persons who are not Directors of the Trust or other health service bodies in question.

5.2.2 Any committee or joint committee appointed under this Standing Order may, subject to such directions as may be given by Monitor or the Trust or other health service bodies in question, appoint subcommittees consisting wholly or partly of members of the committees or joint committee (whether or not they are Directors of the Trust or health service bodies in question) or wholly of persons who are not Directors of the Trust or health service bodies in question or the committee of the Trust or health service bodies in question.

5.3 Applicability of Standing Orders and Standing Financial Instructions to Committees

5.3.1 These Standing Orders and the Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Trust including the Board of Directors. In which case the term “Chair” is to be read as a reference to the Chair of other committees as the context permits, and the term “member” is to be read as a reference to a member of other committee also as the context permits. (There is no requirement to hold meetings of committees established by the Trust in public.)

5.4 Terms of Reference

5.4.1 Each such 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 and shall be in accordance with any legislation and regulation or direction issued by Monitor. Such terms of reference shall have effect as if incorporated into these Standing Orders.

5.5 Delegation of Powers by Committees to Subcommittees

5.5.1 Where committees are authorised to establish subcommittees, they may not delegate executive powers to the subcommittee unless expressly authorised by the Board of Directors.

5.6 Approval of Appointments to Committees

5.6.1 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 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 as defined by Monitor. 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 with national guidance where appropriate.

5.7 Appointments for Statutory Functions

5.7.1 Where the Board of Directors is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor and where such appointments are to operate independently of the Board of Directors, such appointment shall be made in accordance with the regulations and directions laid down by Monitor.

5.8 Committees Established by the Board of Directors

5.8.1 The committees, subcommittees and joint committees established by the Board of Directors are:

- (a) Appointments and Performance Committee;
- (b) Remuneration and Terms of Service Committee;
- (c) Audit and Risk Assurance Committee;
- (d) Quality and Patient Safety Assurance Committee;
- (e) People & Organisational Development Assurance Committee;
- (f) Finance and Performance Assurance Committee; and
- (g) Charitable Funds Committee.

See terms of reference for the roles and responsibilities of committees.

5.8.2 In addition the Board of Directors will establish such other committees and sub-committees as it deems necessary to exercise its functions under SO [3.8](#).

5.8.3 For the avoidance of doubt the terms of reference for such joint committees of the Board of Directors and the Council of Governors will be agreed jointly by the Board of Directors and the Council of Governors.

5.8.4 The provisions of this Standing Order must be read in conjunction with Standing Order [3.8](#).

5.8.5 *Other Committees*

The Board of Directors may also establish such other committees as required to discharge the Trust's responsibilities.

6 ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

6.1 Delegation of Functions to Committees, Officers or Other Bodies

6.1.1 Subject to such directions as may be given by Monitor, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions by a committee, joint committee or subcommittee appointed by virtue of Standing Order [5](#) or by an Officer of the Trust, or by another body, in each case subject to such restrictions and conditions as the Trust thinks fit.

6.1.2 Where a function is delegated by these Standing Orders to another health service body including an NHS Foundation Trust, then that Trust or health service body exercises the function in its own right; the receiving body has responsibility to ensure that the proper delegation of the function is in place. In other situations, i.e., delegation to committees, subcommittees or Officers, the Trust delegating the function retains full responsibility.

6.2 Emergency Powers and Urgent Decisions

6.2.1 The powers which the Board of Directors has reserved to itself within these Standing Orders (see Standing Order [3.9](#)) may in emergency or for an urgent decision 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 Chair shall be reported to the next formal meeting of the Board of Directors for formal ratification.

6.3 Delegation to Committees

6.3.1 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by other committees, or subcommittees or joint committees which it has formally constituted in accordance with directions issued by Monitor. The Constitution and terms of reference of these committees, or subcommittees or joint committees and their specific executive powers shall be approved by the Board of Directors in respect of its subcommittees.

6.4 Delegation to Officers

6.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to other committee or subcommittee or joint committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Officers to undertake the remaining functions for which they will still retain accountability to the Trust.

6.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals which shall be considered and approved by the Board of Directors. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors.

6.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance to provide information and advise the Board of Directors in accordance with statutory, Secretary of State or Monitor's requirements. Outside these statutory requirements, the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

6.5 Schedule of Matters Reserved to the Trust and Scheme of Delegation of Powers

6.5.1 The arrangements made by the Board of Directors as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect as if incorporated in these Standing Orders.

6.6 Duty to Report Non-Compliance with Standing Orders and Standing Financial Instructions

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

7 OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

7.1 Policy Statements: General Principles

7.1.1 The Board of Directors will from time to time agree and approve Policy statements/procedures which will apply to all or specific groups of staff employed by the Trust. The decision to approve such policies and procedures will be recorded in an appropriate Board of Directors' Minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

7.2 Specific Policy Statements

7.2.1 Notwithstanding the application of Standing Order [7.1](#) above, these Standing Orders and any Standing Financial Instructions must be read in conjunction with the following Policy statements:

- (a) The Standards of Business Conduct and Conflicts of Interest Policy for Trust staff;
- (b) The Staff Disciplinary and Appeals Procedures adopted by the Trust, both of which shall have effect as if incorporated in these Standing Orders.

7.3 Standing Financial Instructions

7.3.1 Standing Financial Instructions adopted by the Board of Directors in accordance with the relevant financial regulations shall have effect as if incorporated in these Standing Orders.

7.4 Specific Guidance

7.4.1 Notwithstanding the application of Standing Order [7.1](#) above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Secretary of State for Health or Monitor:

- (a) Standards of Business Conduct and Conflicts of Interest Policy;
- (b) Caldicott Guardian 2006;
- (c) Human Rights Act 1998;
- (d) Freedom of Information Act 2000.

8 DUTIES AND OBLIGATIONS OF BOARD OF DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

8.1 Declaration of Interests

8.1.1 Requirements for Declaring Interests and Applicability to Board of Directors

Board Directors shall declare interests which are pecuniary (which includes monetary) personal or family interests that they have and which are relevant to the Trust. All existing Board Directors should declare such interests. Any Board Director appointed subsequently should do so on appointment. A nil return should be submitted as such.

8.1.2 Interests which should be declared pursuant to [8.1.1](#) above include:

- (a) Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies).
- (b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- (d) A position of authority in a charity or Voluntary Organisation in the field of health and social care.
- (e) Any connection with a voluntary or other organisation contracting for NHS Services.
- (f) Any substantial or influential connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to lenders or banks.
- (g) Any other commercial interest in the decision before the meeting.
- (h) Research funding/grants that may be received by an individual or their department.
- (i) Interests in pooled funds that are under separate management

For the avoidance of doubt, any Director of the Board of Directors who comes to know that the Trust has entered into

or proposes to enter into a contract in which they or any person connected with them (including those persons who are referred to in Standing Order [8.3](#) below and elsewhere) has any pecuniary interest, direct or indirect, the Director shall declare their interest by giving notice in writing of such fact to the Trust as soon as practicable. A nil return should be submitted as such.

8.1.3 Advice on Interests

If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust or with the Company Secretary.

Financial Reporting Standard No. 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

8.1.4 Publication of Declared Interests in Annual Report

Board of Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

8.1.5 Conflicts of Interest which arise during the course of a Meeting

During the course of a Board of Directors' meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with Standing Order [8.3](#).)

8.2 Register of Interests

8.2.1 The Chief Executive will ensure that a Register of Interests is established to formally record declarations of interests of Board or Committee members. In particular, the Register will include details of all interests (as defined in Standing Order [8.1](#)) which have been declared by both Executive and Non-Executive Directors.

8.2.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve (12) months will be incorporated.

8.2.3 The Register will be available to the public during normal office hours and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it during normal office hours.

8.3 Exclusion of Chair and Members in proceedings on account of Pecuniary Interest

8.3.1 Definition of Terms used in interpreting “Pecuniary” Interest

For the sake of clarity, the following definition of terms is to be used in interpreting Standing Orders:

- (a) “Spouse” shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- (b) “Contract” shall include any proposed contract or other course of dealing.
- (c) “Pecuniary Interest”

Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:

- (i) they, or a nominee of theirs, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
- (ii) they are a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.

- (d) Exception to Pecuniary Interests

A person shall not be regarded as having a pecuniary interest in any contract if:

- (i) neither they or any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a member, or
- (ii) any interest that they or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract, or
- (iii) those securities of any company in which they (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one percent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided, however, that where Paragraph [\(iii\)](#) above applies, the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order [8.1.2](#).

8.3.2 Exclusion in Proceedings of the Board of Directors

- (a) Subject to the following provisions of this Standing Order, if the Chair or a Director of the Board of Directors has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as is practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (b) Monitor may, subject to such conditions as it thinks fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to it in the interests of the National Health Service that the disability should be removed.
- (c) The Board of Directors may exclude the Chair or a Director of the Board from a meeting of the Board of Directors while any contract, proposed contract or other matter in which they have a pecuniary interest is under consideration.
- (d) Any remuneration, compensation or allowance payable to the Chair or a Director shall not be treated as pecuniary interest for the purpose of this Standing Order.

(e) This Standing Order applies to a committee or subcommittee and to a joint committee or subcommittee as it applies to the Trust and applies to a member of any such committee or subcommittee (whether or not they are also a Director of the Trust) as it applies to a Director of the Trust.

8.4 Standards of Business Conduct

8.4.1 Trust Policy and National Guidance

All Trust staff and members of the Board of Directors must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy (see Standing Order [7.2](#)).

8.4.2 Interests of Officers in Contracts

(a) Any Officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in Standing Order [8.3](#)) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Company Secretary as soon as practicable.

(b) An Officer should also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

(c) The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

8.4.3 Canvassing of and Recommendations by Members in relation to Appointments

(a) Canvassing of Directors of the Trust or of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

(b) Directors of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

8.4.4 Relatives of Directors or Officers

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

(b) The Chair and every Director and Officer of the Trust shall disclose to the Board of Directors any relationship between themselves and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.

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

(d) Where the relationship to a Director of the Trust is disclosed, the Standing Order headed “Disability of Chair and Directors in proceedings on account of pecuniary interest” (Standing Order [8](#)) shall apply.

9 CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

9.1 Custody of Seal

The common seal of the Trust shall be kept in a secure place by the Company Secretary.

9.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two (2) Executive Directors or an Executive Director and the Chair duly authorised by a Resolution of the Board or of a Committee of the Board (where the Board has delegated its power) and shall be attested by them.

9.3 Register of Sealing

The Chief Executive shall keep a register in which they or another manager of the Trust authorised by them, shall enter a record of the sealing of every document.

9.4 Signature of Documents

Where any document will be a necessary step in legal proceedings on behalf of the Trust it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documentation will be delegated to managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g., sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

10 RESOLUTION OF DISPUTES WITH THE COUNCIL OF GOVERNORS

10.1 Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below should be followed.

10.2 The Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, shall first endeavour through discussion with Governors and Directors or appropriate representatives of them, to achieve the earliest possible conclusion to resolve the matter to the reasonable satisfaction of both parties.

10.3 Failing resolution under Standing Order [10.2](#) above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.4 The Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or the Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

10.5 The Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in Standing Order [10.2](#) above shall be repeated.

10.6 If, in the opinion of the Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, and following the

further discussions prescribed in Standing Order [10.2](#), there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair, or Deputy Chair or Senior Independent Director (if the dispute involves the Chair) as appropriate, as the case may be, there is no prospect of a resolution (partial or otherwise), then they shall advise the Council of Governors and the Board of Directors accordingly.

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

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

10.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the conditions of its licence.