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**CITY HOSPITALS SUNDERLAND NHS FOUNDATION
TRUST**

(A PUBLIC BENEFIT CORPORATION)

CONSTITUTION

Revised June 2005

In this constitution, references to clauses are to relevant provisions of the Health and Social Care (Community Health and Standards) 2003 Act.

Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the 2003 Act.

References in this constitution to legislation include all amendments, replacements, or re-enactments made.

References to legislation include all regulations, statutory guidance or directions.

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

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

1. Definitions

1.1 In this constitution:

“the 2003 Act”	means the Health and Social Care (Community Health and Standards) Act 2003;
“the 1977 Act”	means the National Health Service Act 1977;
“the Trust”	means City Hospitals Sunderland NHS Foundation Trust;
“area of the Trust”	means the area specified in Annex 1 as the area of the Trust’s public constituencies;
“board of directors”	means the board of directors as constituted in accordance within this constitution;
“director”	means a director of the board of directors;
“board of governors”	means the board of governors for City Hospitals Sunderland NHS Foundation Trust and with specific responsibilities as set out in this constitution and constituted in accordance with this constitution;
“Trust Secretary”	means the secretary of the Trust (and secretary to the Board of Governors of the Trust) or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;

“member”	means a member of the Trust membership community;
“public governor”	means a member on the board of governors elected by the members of the public constituency of the membership community;
“staff governor”	means a member on the board of governors elected by the members of the staff constituency of the membership community;
“patients’ governor”	means a member on the board of governors elected by the members of the patients’ constituency of the membership community;
“PCT governor”	means a member of the board of governors appointed by a Primary Care Trust for which the Trust provides goods or services;
“Local Authority governor”	means a member of the board of governors appointed by the City of Sunderland whose local authority area includes the majority of the area specified in Annex 1 as the area of the public constituency;
“Financial year”	Means: (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 st March; and (b) each successive period of twelve months beginning 1 st April;
“Monitor”	means the Independent Regulator of NHS Foundation Trusts for the purposes of Part I of the 2003 Act;
“patient”	for the purposes of this constitution means a person who has attended any one of the sites of the Trust for the purpose of receiving NHS assessment, care or treatment and has been registered as a patient of the Trust on or after 1 January 2003 and resides outside the area of the Trust defined for the public constituencies.
“carer”	for the purposes of this constitution, means an individual who has attended any one of the sites of the Trust as a carer of a patient (as defined immediately above) , other than as an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation.
“voluntary organisation”	for the purposes of this constitution, means an independent organisation established for purposes that add value to the community (as a whole or a significant section) and which are not permitted by their constitution to make a profit for private distribution.

2. Name

*Schedule 1,
para 2*

- 2.1** The name of this Trust is to be “City Hospitals Sunderland NHS Foundation Trust”.

3. Principal Purpose

*Section
14(2)*

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

4. Other Purposes

- 4.1** The purpose of the Trust (as required by the 2003 Act) is to provide goods and services for purposes related to the provision of health care in accordance with its statutory duties and the terms of Monitor's authorisation.

*Section
14(3)*

- 4.2** The Trust may also carry on activities other than those mentioned above, subject to any restrictions in Monitor's authorisation. These activities must be for the purpose of making additional income available in order to carry on the Trust's principal purpose better.

5. Powers

*Sections 17
and 18*

- 5.1** The Trust is to have all the powers of an NHS foundation trust set out in the 2003 Act, subject to the terms of its authorisation.

6. Framework

The Trust will have a membership community drawn from residents of its public constituencies, its patients' constituency and its staff constituency. These members will be able to elect governors from within their constituency (or for staff their class within the staff constituency). These elected governors will sit on the Trust's Board of Governors with governors appointed from key partner organisations of the Trust. The public governors and the patients' governor will hold the majority of the seats on the Board of Governors. The Board of Governors will provide a local community voice in the development of the Trust and its plans. A Board of Directors will be responsible for the management of the Trust. Governors will be drawn from the membership constituencies and representatives from organisations closely connected with the goods and services of the Trust as described in section 8 of this constitution.

7. Members

Schedule 1, para 3(1) **7.1** The Trust membership community is to have four membership constituencies, namely:

- (a) Two “public constituencies”;
- (b) A “staff constituency”; and
- (c) A “patients’ constituency”.

7.2 Public Constituencies

Schedule 1, para 3(1)(a) and (2),4(2) **7.2.1** The Trust will have two public constituencies (Sunderland and North Easington). Members of the public constituencies are to be individuals who live in the area of the Trust which is based on:

- (a) The electoral wards of Sunderland; and
- (b) The electoral wards of North Easington;

(The area of the Trust is specified in Annex 1); and

Schedule 1, Paras 4(5), (6) (c) Who are not eligible to become members of the staff constituency and are not members of any other constituency or otherwise disqualified for membership under paragraph 7.5;

(d) Who are of a minimum age of 16 years; and

(e) Who have each made an application for membership to the Trust.

Schedule 1, para 5 **7.2.2** The minimum number of members of the public constituencies will be 120, as set out in annex 1.

7.3 Staff Constituency

Schedule 1, Paras 3(4) and 4(3) **7.3.1** The staff constituency is divided into 3 classes of individuals as follows:

- (a) The medical and dental practitioners’ staff class;
- (b) The clinical staff class; and
- (c) The other staff class.

Schedule 3(4) **7.3.2** The members of the medical and dental practitioners’ staff class are individuals who are members of the staff constituency who are fully registered persons within the meaning of the Medicines Act 1956 and the Dentists Act 1984 (and in the case of medical practitioners, who hold a licence to practice).

- Schedule 3(4)* 7.3.3 The members of the clinical staff class are individuals who are members of the staff constituency who are not fully registered persons within the meaning of the Medicines Act 1956, but whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professions established by section 25 of the NHS Reform and Health Care Professionals Act 2002.
- Schedule 3(4)* 7.3.4 The members of the other staff class are individuals who are members of the staff constituency who do not come within paragraphs 7.3.2 or 7.3.3 above.
- Schedule 1,*
Para
3(1)(b),
- Para*
3(1)(b),and (3)
- Schedule 1,*
para
3(3)
- Schedule 1,*
para 6(2)
- Schedule 1,*
para 5
- Schedule 1,*
paras 4(5)
and (6)
- 7.3.5 Members of the staff constituency are to be individuals:
- (a) who are employed under a contract of employment by the Trust; or
 - (b) who are not so employed but who nevertheless exercise functions for the purposes of the Trust;
 - (c) who satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 1 to the 2003 Act, that is to say:
 - (i) in the case of individuals described at (a) above,
 - (aa) who are employed under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
 - (bb) who have been continuously employed by the Trust for at least 12 months;
 - (ii) in the case of individuals described at (b) above, who have exercised the functions for the purposes of the Trust for at least 12 months; and
 - (d) who are not disqualified for membership under paragraph 7.5 below; and
 - (e) who have been invited by the Trust to become a member of the staff constituency (as a member of the appropriate staff class) and have not informed the Trust that they do not wish to do so.
- 7.3.6 The minimum number of members of the staff constituency is:
- (a) 500 and for each class:
 - (i) 10 for medical and dental practitioners staff class
 - (ii) 200 for clinical staff class
 - (iii) 290 for the other staff class.
- 7.3.7 A person who is eligible to be a member of the staff constituency, may not become or continue as a member of any constituency other than the staff constituency and may not become or continue as a member of more than one staff class.

7.4 Patients' Constituency

7.4.1 The members of the patients' constituency are:

- (a) individuals who have been registered as a patient of the Trust on or after 1 January 2003 and who reside outside the area of the public constituencies (as defined in Annex 1); or
- (b) who are carers of patients identified in (a) above.

7.4.2 The members of the Trust who are members of the patients' constituency, are individuals:

- (a) who are patients and carers as defined in 7.4.1 above; and
- (b) who are not eligible to become a member of the public constituency or to become a member of the staff constituency and are not members of any other constituency and are not otherwise disqualified for membership; and
- (c) who are not disqualified for membership under paragraph 7.5 below;
- (d) who are a minimum age of 16 years; and
- (e) who have been invited by the Trust to become a member of the patients' constituency (otherwise than as a carer of a patient) and become a member without an application being made, unless he informs the Trust that he does not wish to do so.
- (f) in the case of carers of patients eligible to be members of the patients' constituency, an application for membership must be made by the individual.

7.4.3 The minimum number of members required for the patients' constituency is 100.

7.5 Disqualification for Membership

*Schedule 1,
para 3(7)*

7.5.1 A person may not be a member of the Trust membership community if he fails to fulfil the criteria for membership set out in paragraphs 7.2 to 7.4.

7.5.2 It is the responsibility of members to ensure their eligibility and not the Trust but if the Trust is on notice that a member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

7.6 Termination of Membership

*Schedule 1,
para 3(7)*

7.6.1 A member shall cease to be a member if he:
(a) resigns by notice to the Trust Secretary;

- (b) ceases to fulfil the requirements of paragraph 7.2, 7.3 or 7.4; or
- (c) is disqualified under paragraph 7.5.

7.7 Voting at Governor Elections

Section 36(1),

7.7.1 A person may not vote at an election for a public governor or the patients' governor unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a member of the public constituency or patients' constituency, identifying the constituency for which he is a member for which an election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

8. Board of Governors

Schedule 1, paras 7(1) and 9

8.1 The Board of Governors is to include public governors, a patients' governor, staff governors, PCT governors and a local authority governor.

8.2 The Board of Governors is to consist of:

Schedule 1, para 9(1)

(a) 10 public/patient governors which is more than half the total membership of the board as follows:

- 7 from the electoral wards of the Sunderland public constituency
- 2 from the electoral wards of the North Easington public constituency
- 1 from the patients' constituency

Schedule 1, para 9(2)

(b) 5 staff governors as follows:

- 1 from the medical and dental staff class;
- 2 from the clinical class; and
- 2 from the other staff class;

Schedule 1, para 9(3)

(c) 2 PCT governors as follows:

- 1 PCT governor from Easington PCT representing the interests of Easington PCT and all other Durham PCT commissioners of the Trusts goods and services;
- 1 PCT governor from Sunderland TPCT representing the interests of Sunderland TPCT and other PCT commissioners of the Trusts goods and services, with the exception of Easington and other Durham PCTs.

Schedule 1, para 9(4)

(d) 1 Local Authority governor from City of Sunderland Council

(e) the Board of Governors will be chaired by the Chair of the Trust.

8.3 An associate member shall be appointed to attend the Board of Governors representing the University of Sunderland and the University of Northumberland (those educational institutions which provide the majority of the Trust's vocational training requirements). This associate member is not a governor and carries no voting rights.

8.4 Public Governors

*Schedule 1,
para 7(4)*

8.4.1 Members of each of the public constituencies may elect any of their number to be a public governor.

8.4.2 If contested the election must be by secret ballot.

*Schedule 1,
para 14(1)(a)*

8.4.3 The Election Rules (including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is uncontested) is set out in Annex 3.

*Section 36(2)
(5) and (6)*

8.4.4 A person may not stand for election to the Board of Governors as a public governor unless, he is of the minimum age of 18 years and within the period specified in Annex 3, he has made a declaration in the form specified in that part of the Annex of the particulars of his qualification to vote as a member of the public constituency for which the election is being held and is not prevented from being a member of the board by paragraph 8 to Schedule 1 of the 2003 Act or paragraph 8.13 below (disqualification). It is an offence to knowingly or recklessly make a declaration under section 36 of the 2003 Act which is false in a material particular.

8.4.5 Paragraph 7.7.1 (voting at governor elections) applies.

8.5 Patients' Governor

*Schedule 1,
para 7(4)*

8.5.1 Members of the patients' constituency may elect any one of their number to be a patients' governor.

Section 35(5)

8.5.2 If contested the election must be by secret ballot.

8.5.3 The Election Rules (including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is uncontested) is set out in Annex 3.

*Section 36(2)
(5) and (6)*

8.5.4 A person may not stand for election to the board as a patients' governor unless, he is of the minimum age of 18 years and within the period specified in Annex 3, he has made a declaration in the form specified in that part of that Annex of the particulars of his qualification to vote as a member of the patients' constituency for which the election is being held and is not prevented from being a member of the board by paragraph 8 to Schedule 1 to the 2003 Act or paragraph 8.13 below (disqualification). It is an offence to knowingly or recklessly make a declaration under section 36 of the 2003 Act which is false in a material particular.

8.5.5 Paragraph 7.7.1 (voting at governor elections) applies.

8.6 Staff Governors

*Schedule 1,
para 7(4)*

8.6.1 Members of a staff class of the staff constituency may elect any of their number to be a staff governor for that class.

Section 35(5)

8.6.2 If contested, the election must be by secret ballot.

*Schedule 1,
para 14(1)a*

8.6.3 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is uncontested) is set out in Annex 3.

8.6.4 A person may not become or remain a governor unless he is of the minimum age of 18 years or if he is prevented from being a member of the Board of Governors by paragraph 8 to Schedule 1 to the 2003 Act or paragraph 8.13 below (disqualification).

8.7 PCT Governors

*Schedule 1,
paras 14(1)(b)
and 9(3)*

8.7.1 The Primary Care Trusts listed in Annex 4 are each authorised to appoint 1 PCT governor, pursuant to a process agreed by these Primary Care Trusts and the Trust.

8.8 Local Authority Governors

*See Schedule
1, paras
14(1)(b) and
9(4)*

8.8.1 The City of Sunderland is authorised to appoint 1 Local Authority governor pursuant to a process agreed by that local authority and the Trust.

8.9 Associate Member

8.9.1 The University of Sunderland with the University of Northumbria are authorised to jointly appoint one associate (non-voting) member pursuant to a process agreed by these two organisations with the Trust.

8.10 Failure to Appoint

8.10.1 If and to the extent that a Primary Care Trust or local authority fails to appoint a governor in accordance with the process in paragraphs 8.7.1 and 8.8.1 within three months of being invited to do so by the Trust, the Trust may seek an appointment from an alternative partnership organisation which in the Trust's opinion has similar objects or provides similar services to the partnership organisation it stands in substitution for.

8.11 Terms of Office

8.11.1 Public governors:

*Schedule 1,
para 10(1)
Schedule 1,*

(a) May hold office for a period of three years;

- para 10(2)*
- Schedule 1, para 14(2)*
- Schedule 1, para 10(3)*
- (b) Are eligible for re-election at the end of that period;
- (c) May not hold office for longer than 6 years and therefore must stand down from office after 6 years service;
- (d) Cease to hold office if they cease to be a member of the public constituency.
- 8.11.2 The Patients' governor:
- Schedule 1, para 10(1)*
- Schedule 1, para 10(2)*
- Schedule 1, para 14(2)*
- Schedule 1, para 10(3)*
- (a) May hold office for a period of three years;
- (b) Is eligible for re-election at the end of that period;
- (c) May not hold office for longer than 6 years and therefore must stand down from office after 6 years service;
- Ceases to hold office if he ceases to be a member of the patients' constituency.
- 8.11.3 Staff governors:
- Schedule 1, para 10(1)*
- Schedule 1, para 10(2)*
- Schedule 1, para 14(2)*
- Schedule 1, para 10(3)*
- (a) May hold office for a period of three years;
- (b) Are eligible for re-election at the end of that period;
- (c) May not hold office for longer than 6 years and therefore must stand down from office after 6 years service;
- (d) Cease to hold office if they cease to be a member of the staff constituency.
- 8.11.4 PCT governors:
- (a) Will hold office until the individual vacates the post; or
- (b) Until the PCT withdraws its sponsorship of the individual (by notice to the Trust Secretary to that effect).
- Schedule 1, para 14(2)*
- 8.11.5 City of Sunderland local authority governor:
- (a) Will hold office until the individual vacates the post; or
- (b) Until the City of Sunderland local authority withdraws its sponsorship of that individual (by notice to the Trust Secretary to that effect).
- 8.11.6 Educational associate member:
- (a) Appointment to this post will be jointly agreed by the University of Sunderland and the University of Northumbria with the Trust.
- (b) The individual appointed will hold the post until the University of Sunderland and the University of

Northumbria jointly agree with the Trust that another individual will take up the post; or

- (c) until the individual's parent organisation withdraws its sponsorship of that individual (by notice to the Trust Secretary to that effect).

*Schedule 1,
para 14(1)(d)*

8.12 Termination of Tenure

8.12.1 A governor may resign from that office at any time during the term of that office by giving notice in writing to the Trust Secretary.

8.12.2 If a governor fails to attend three consecutive Board of Governors meetings, his tenure of office is to be immediately terminated unless the other governors are satisfied that:

- (a) the absence was due to a reasonable cause; and
- (b) he will be able to start attending meetings of the Board of Governors again within such a period as they consider reasonable.

8.13 Disqualification

*Schedule 1,
paras 8 and
10(3)*

8.13.1 A person may not become or continue as a governor of the Trust if:

- (a) he is less than the minimum age of 18 years
- (b) in the case of a public governor or the patients' governor or a staff governor, he ceases to be a member of the constituency he represents;
- (c) in the case of a PCT governor, City of Sunderland local authority governor or educational associate member, the sponsoring organisation withdraws their sponsorship of him;
- (d) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (e) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (f) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (g) he has within the preceding two years been dismissed,

otherwise than by reason of redundancy, from any paid employment with a public service body;

- (h) he is a person whose tenure of office as the chairman or as a member or director of a public service body has been terminated on the grounds that his appointment is not in the interests of that public service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- (i) he is an executive or non-executive director of the Trust, or a governor, non-executive director, chairman, chief executive or executive director of another NHS foundation trust;
- (j) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had his name included in such a list;
- (k) he is incapable by reason of continuing mental incapacity, illness or injury of managing and administering his property and affairs.
- (l) he brings the Board of Governors or any of its member organisations into disrepute.
- (m) he fails to abide by the constitution as set out in this document.

8.13.2 Where a person has been elected or appointed to be a governor and he becomes disqualified for appointment under paragraph 8.13.1, he shall notify the Trust Secretary in writing of such disqualification.

If it comes to the notice of the Trust Secretary at the time of his appointment or later that the governor is so disqualified, the Trust Secretary shall immediately convene a meeting of the Board of Governors membership panel. The final decision on disqualification from eligibility to become, or remain a governor will rest with this membership panel comprising the Chair of the Trust (and Board of Governors), a PCT governor, the City of Sunderland governor, two public constituency governors and a staff governor. The Chairman will have a casting vote but no vote otherwise. The decision of the panel on whether to disqualify the person in question will be notified to him in writing by the Trust Secretary.

Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a governor.

8.14 Vacancies

*Schedule 1,
para 14(2)*

- 8.14.1 Where membership of the Board of Governors ceases for one of the reasons set out in paragraph 7.6.1 or paragraph 8.13 above, public governors, the patient's governor and staff governors shall be replaced by by-elections in accordance with section 32 of the Electoral Rules set out in Annex 3. The period of office will be agreed by the Board of Governors prior to the by-election and made known to candidates. PCT and local authority governors and educational associate member are to be replaced in accordance with the processes agreed pursuant to paragraphs 8.7, 8.8, 8.11.4, 8.11.5 and 8.11.6.
- 8.14.2 Where a PCT or local authority governor post falls vacant, the PCT or local authority will appoint another governor within 3 months of the Trust Secretary receiving notification from the PCT or local authority of the vacancy. Where the educational associate member post falls vacant, the educational associate organisations defined in 8.11.6 (a), will appoint another educational associate member within 3 months of the Trust Secretary receiving notification from the educational associate organisations of the vacancy.

8.15 Roles and Responsibilities

8.15.1 The roles and responsibilities of the governors are:

(a) at a General Meeting:

*Schedule 1,
paras 17(1),
19 (2), (3), (4),
(6)*

(i) to appoint or remove the chairman and the other non-executive directors of the Trust. The chairman and the non-executive directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Board of Governors. The initial chairman appointed by the Board of Governors is to be the Chairman of the applicant trust if he wishes to be appointed. The other initial non-executive directors of the Trust appointed by the Board of Governors are, so far as is possible, to be non-executive directors (other than the chairman) of the applicant trust who wish to be appointed. The removal of the chairman or a non-executive director requires the approval of three-quarters of the members of the Board of Governors;

*Schedule 1,
para 18*

(ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the chairman and non-executive directors (taking into account independent financial advice);

*Schedule 1,
para 23 (2)*

(iii) to appoint or remove the Trust's auditor;

*Schedule 1,
para 28*

(iv) to be presented with the annual accounts, any auditors report on them and the annual report;

*Schedule 1,
paras 17(4)
and 19 (5)
and (6)*

(b) to approve (by a majority of all governors) an appointment by the chairman and non-executive directors of the chief executive (other than the initial chief executive of the Trust appointed in pursuance of paragraph 19(6) of Schedule 1 to the 2003 Act);

*Schedule 1,
para 27(3)*

(c) to give the views of the board of governors to directors for the purposes of preparation (by the directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to the Independent Regulator;

(d) to respond as appropriate when consulted on any other matters as agreed with the board of directors in accordance with this constitution.

8.16 Expenses

*Schedule 1,
para 11*

8.16.1 The Trust may pay travelling and other expenses to governors at such rates as it decides. The Board of Directors will consider appropriate rates taking independent financial advice before implementing such rates. These rates are to be published in the Trust's annual report.

8.16.2 The remuneration and allowances for the chairman and non-executive directors of the Trust are to be set by the Board of Governors (the Chair taking independent financial advice on behalf of the board of governors) and are to be published in the Trust's annual report.

8.17 Remuneration

8.17.1 Governors are not to receive remuneration.

8.18 Meetings

*Schedule 1,
para 12*

8.18.1 The Chairman or in his absence, the Vice-Chairman of the Board of Directors will preside at meetings of the Board of Governors. The Chairman (or in his absence the Vice-Chairman) shall have a casting vote but no vote otherwise.

Should there be a vote on any matter relating to the Chairman or non-executive directors, neither the Chairman nor the Vice Chairman should preside. In such circumstances, The Board of Governors shall appoint a deputy Chairman from the governors to preside over and to have the casting vote on such matters.

*Schedule 1,
para 13(1)
and (2)*

8.18.2 Meetings of the Board of Governors are to be open to members of the public except in the following circumstances:

- (a) - matters involving patient confidentiality
- matters regarding exclusions from freedom of information
- matters which are sub-judice

- disciplinary/personnel issues
- any other matters which the Trust considers confidential

*Schedule 1,
para 28*

- 8.18.3 The Board of Governors will meet at least 4 times per year.
- 8.18.4 At a general meeting no later than September, the Board of Governors are to receive and consider the annual accounts, any report of the auditor on them, and the annual report.
- 8.18.5 The Board of Governors will adopt standing orders for their practice and procedures, in particular for procedure at meetings (including general meetings). These shall be in accordance with Annex 2.

8.19 Committees and Sub-Committees

- 8.19.1 The Board of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 8.19.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.
- 8.19.3 Such committees or sub-committees may make recommendations to the Board of Governors but final decision making powers rest with the full Board of Governors.

9. Board of Directors

*Schedule 1,
para 15(1)*

- 9.1** The Trust is to have a Board of Directors. It is to consist of executive and non-executive directors.

*Schedule 1,
para 16(1)*

- 9.2** The Board is to include:

*Schedule 1,
para 16(1)(b)*

- (a) the following non-executive directors:

- (i) a Chairman;
- (ii) a minimum of three and up to five other non-executive directors;

*Schedule 1,
para 16(1)(b)*

- (b) the following executive directors:

*Schedule 1,
para 16(1)(a)*

- (i) a Chief Executive (and accounting officer);

- Schedule 1, para 16(1)(a)* (ii) a Finance Director
- Schedule 1, para 16(1)(a)* (iii) a Director who is registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984);
- Schedule 1, para 16(2)* (iv) a Director who is a registered nurse or a registered midwife.
- Schedule 1, para 16(2)* (v) a fifth executive director
- Schedule 1, para 16(4)* **9.3** Subject to paragraph 9.3.1 below, only a member of the public constituency or the patients' constituency is eligible for appointment as a non-executive director

9.3.1 Paragraph 9.3 above does not apply to the appointment of any initial non-executive director in pursuance of paragraph 19 of Schedule 1 to the 2003 Act.

9.4 Appointment of Directors

9.4.1 Subject to the provisions in paragraph 9.5.1 regarding initial appointments, directors are to be appointed in accordance with a process of open competition.

Section 7(6) 9.4.2 The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

9.5 Terms of Office

Schedule 1, paras 17(1), 18(1) and 19(4) 9.5.1 It is for the Board of Governors at a general meeting to appoint or remove the chairman and other non-executive directors. The Chairman and the non-executive directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Board of Governors. Removal of a non-executive director requires the approval of three-quarters of the members of the Board of Governors. The power to appoint the initial chairman of the Trust is to be exercised by appointing the chairman of the NHS trust if he so wishes and the power to appoint the initial non-executive directors of the Trust is to be exercised by appointing the non-executive directors of the NHS trust if they so wish. The persons appointed are to be appointed for the un-expired period of their respective terms of office as chairman or non-executive director of the applicant trust or for a period of office to be confirmed by the Board of Governors, which will be no less than 12 months.

The Board of Governors will use external assessors for advice as appropriate, subject to the final decision on appointment or removal remaining with the Board of Governors in compliance with schedule 1, section 17 of the Act.

9.5.2 The Chief Executive (and accounting officer) will be appointed or removed by the Chairman and other non-executive directors, The appointment of a Chief Executive requires the approval of the Board of Governors. Other executive directors will be appointed by a committee of the Chair, the Chief Executive and the other non-executive directors. Executive directors shall hold office on a three year rolling contract and in accordance with the terms and conditions of office decided by a remuneration and allowances committee of non-executive directors. The three-year rolling contract will apply for as long as they hold their posts in the Trust, subject to satisfactory performance appraisal and adherence to the NHS Code of Conduct. Executive directors will also be subject to the Trust's policies and procedures. The power to appoint the initial Chief Executive and executive directors will be exercised by appointing the Chief Executive and executive directors of the NHS trust.

In appointing a Chief Executive, the Chairman and non-executive directors shall use external assessors for advice as appropriate, subject to the decision on appointment or removal remaining with the Chairman and non-executive directors. The final decision on appointment of a Chief Executive requires the approval of the Board of Governors. In appointing executive directors, the Chairman, Chief Executive and non-executive directors shall use external assessors for advice as appropriate, subject to the final decision on appointment or removal remaining with the Chairman, Chief Executive and non-executive directors.

9.6 Disqualification

*Schedule 1,
para 16(3)*

9.6.1 A person may not be a director of the Trust if:

*Schedule 1,
para 16(3)*

(a) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;

*Schedule 1,
para 16(3)*

(b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

*Schedule 1,
para 16(3)*

(c) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

*Schedule 1,
para 16(4)*

(d) in the case of a non-executive Director, he no longer satisfies paragraph 9.3.

- (e) he is a person whose tenure of office as a chairman or as a member or director of a public service body has been terminated on the grounds that his appointment is not in the interests of public service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- (f) he has had his name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act, and has not subsequently had his name included on such a list;
- (g) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a public service body;

9.7 Roles and Responsibilities

<i>Schedule 1, para 15(2)</i>	9.7.1	The powers of the Trust are to be exercisable by the Board of Directors on its behalf.
<i>Schedule 1, para 15(3)</i>	9.7.2	Any of those powers may be delegated to a committee of directors or to an executive director.
<i>Schedule 1, para 23(6)</i>	9.7.3	A committee of non-executive directors established as an audit committee is to monitor, review and carry out such other functions as are appropriate.
<i>Schedule 1, para 17(2) and para 19(5)</i>	9.7.4	It is for the Chair and non-executive directors to appoint (subject to the approval of the Board of Governors) the Chief Executive (and accounting officer). The initial Chief Executive (and accounting officer) appointed is to be the Chief Executive of the applicant NHS Trust.
<i>Schedule 1, para 17(3)</i>	9.7.5	It is for a committee consisting of the Chairman, the Chief Executive (and accounting officer) and the other non-executive directors to appoint or remove the executive directors. The initial executive directors appointed are to be the executive directors of the applicant NHS trust.
<i>Schedule 1, para 18(2)</i>	9.7.6	The Trust is to establish a committee of non-executive directors to decide the remuneration and allowances and the other terms and conditions of office, of the executive directors (Remuneration Committee). Pending establishment of such a committee, executive directors of the applicant NHS trust appointed to the Trust will be appointed on their current terms and conditions.
<i>Schedule 1, para 27(2) and (3)</i>	9.7.7	The Directors, having regard to views of the Board of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
<i>Schedule 1, para 28</i>	9.7.8	The Directors are to present to the Board of Governors, at a general meeting held by 30 September each year the annual accounts, any report of the auditor on them, and the annual report.

*Schedule 1,
para 25(5)*

9.7.9 The functions of the Trust under sub-paragraphs (a) and (b) of paragraph 15.6 below are delegated to the Chief Executive as accounting officer.

10. Meetings of Directors

10.1 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. These are to include setting a quorum for meetings, both of executive and non-executive directors, but these shall be in accordance with Annex 2. The proceedings shall not however be invalidated by any vacancy in its membership, or defect in a director's appointment.

11. Register of Directors and Governors Interests

*Schedule 1,
para 20*

11.1 A register of directors and governors interests will be maintained by the Trust Secretary.

*Schedule 1,
para 21*

11.2 Declaration of Interests

All existing directors and initially appointed or elected governors shall declare relevant and material interests. Directors or governors appointed or elected subsequently shall do so on appointment or election.

11.3 Interests which shall be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the register are:

- (a) directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- (b) ownership, part-ownership or directorship of private companies, business 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 in the field of health and social care;
- (f) to the extent not covered above, any connections 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.

11.4 If a director or governor has any doubt about the relevance or materiality of an interest, the director or governor shall discuss this with the Chairman.

- 11.5** At the time the interests are declared, they shall be recorded in the minutes of the Board of Directors meeting or the Board of Governors meeting as appropriate. Any changes of interests of a director or governor shall be officially declared at the next meeting of the Board of Directors or Board of Governors as appropriate, following the change occurring. It is the obligation of the director or governor to inform the Trust Secretary in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Trust Secretary will amend the register within 3 working days.
- 11.6** Directors' *directorships* of companies in 11.3 (a) above or in companies likely or possibly seeking to do business with the NHS in 11.3 (b) above should be published in the Board of Directors' annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 11.7** There is no requirement for the interests of directors' or governors' spouses or partners to be declared (subject to the requirements of 11.4).

11.8 Conflict of Interest

During the course of a meeting of the Board of Directors or Board of Governors (or of any committee of the Board of Directors or the Board of Governors), if a conflict of interest is established, the directors or governors concerned shall withdraw from the meeting and play no further part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, the majority will resolve the issue with the Chairman having the casting vote.

12. The Registers

12.1 The Trust will maintain:

*Schedule 1,
para 20(1)(a)*

(a) a register of members showing, in respect of each member, the constituency and where there are sections and/or classes within it, the section and/or class to which he belongs;

para 20(1)(b)

(b) a register of members of the board of governors;

para 20(1)(c)

(c) a register of interests of the governors;

para 20(1)(d)

(d) a register of directors;

para 20(1)(e)

(e) a register of interests of the directors.

See Schedule 1, para 20(2)

12.2 The form of registration:

- (a) Trust Secretary will set out and agree the format of the members register with the Board of Governors. The register will list name and constituency (and class within a constituency where this applies) for each member. Trust Secretary will be responsible for making arrangements for additions and removals from the register. The register will be reviewed annually for completeness and accuracy.
- (b) Trust Secretary will also set out and agree the format of the register of governors and their interests and will be responsible for additions and removals from the register.
- (c) Trust Secretary will also set out and agree the format of the register of directors and their interests and will be responsible for additions and removals from the register.

See section 10(3)

12.3 The Trust is to send to Monitor a list of the persons who were first elected or appointed as:

- (a) The members of the Board of Governors
- (b) The directors

13. Public Documents

Schedule 1, para 22

13.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

- (a) a copy of the current constitution;
- (b) a copy of the current authorisation;
- (c) a copy of the latest annual accounts and of any report of the auditor on them;
- (d) a copy of the latest annual report;
- (e) a copy of the latest information as to its forward planning;
- (f) a copy of any notice given under section 23 of the 2003 Act (Monitor's notice to failing NHS Foundation Trust).

Schedule 1, para 22(2)

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

- Schedule 1, para 22(3)* **13.3** The registers listed in section 12 (1) above are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the 2003 Act and, so far as those registers are required to be made available:
- (a) they are to be available free of charge at all reasonable times;
 - (b) a person who requests is to be provided with a copy of, or an extract from them.
- Schedule 1, para 22(4)* **13.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.
- 13.5** In compliance with Public Benefit Corporation (Register of Members) Regulations 2004:
- (a) the Trust shall ensure that information about patient members is not included in the publicly available register;
 - (b) that in line with European Community Law and the Data Protection Act 1998, the Trust shall ensure that members are made aware of their right to object to their personal data being disclosed to the general public through the register;
 - (c) that the Trust Secretary shall ensure that such regulations only restrict access by the public to the members' register and do not prevent an individual having access to the full register of members if this is necessary for them to carry out legitimate statutory functions. For example the Returning Officer for elections to the Board of Governors.
- 13.6** The Trust Secretary shall take all reasonable steps to bring the existence of the registers to the attention of the local population and to publicise arrangements for viewing it.

14. Auditor

- Schedule 1, para 23(1) and Schedule 5, para 2* **14.1** The Trust will appoint an auditor and will provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Part 1 of the 2003 Act.
- Schedule 1, para 23(4)* **14.2** A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 1 to the 2003 Act.
- 14.3** The Trust's Audit Committee of non-executive directors (as set out in paragraph 9.7.3) will make a recommendation as a result of a competitive process, on the appointment of the auditor to the Board of Directors, the Board of Directors will seek ratification from the Board of Governors in accordance with section 8.15.1.(a)(iii). The Audit Committee of non-executive directors, will monitor integrity of accounts, internal control systems and risk management systems as well as monitoring the exercise of the auditor's functions.

Schedule 1, para 23(3) **14.4** An officer of the Audit Commission may be appointed with the agreement of the Commission.

Schedule 5, Schedule 1, para 24(5) **14.5** The Auditor will carry out his duties in accordance with Schedule 5 to the 2003 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

15. Accounts

Schedule 1, para 24(1) **15.1** The Trust will maintain accounts in such form as Monitor may with the approval of the Treasury direct.

Schedule 1, para 24(2) **15.2** The accounts will be audited by the Trust's auditor.

Schedule 1, para 24(3) **15.3** The following documents will be made available to the Comptroller and Auditor General for examination at his request:

- (a) the accounts;
- (b) any records relating to them; and
- (c) any report of the auditor on them.

Schedule 1, para 25(1) **15.4** The Trust (through its Chief Executive and accounting officer) will prepare in respect of each financial year, annual accounts in such form as Monitor may, with the approval of the Treasury, direct.

Schedule 1, para 25(2) **15.5** In preparing its annual accounts, the Trust will comply with any directions given by Monitor with the approval of the Treasury as to:

- (a) the methods and principles according to which the accounts are to be prepared;
- (b) the information to be given in the accounts.

Schedule 1, para 25(4) **15.6** The Trust must:

- (a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
- (b) once it has done so, send copies of those documents to Monitor.

16. Annual Reports and Forward Plans

Schedule 1, para 26(1) **16.1** The Trust will prepare annual reports and send them to the Monitor.

*Schedule 1,
para 26(2)* **16.2** The reports will give:

- (a) information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public and patient constituency is representative of those eligible for such membership; and

- (b) any other information Monitor requires.

*Schedule 1,
para 26(3)* **16.3** The Trust will comply with any decision Monitor makes as to:

- (a) the form of the reports;

- (b) when the reports are to be sent to it;

*Schedule 1,
para 24(3)*

- (c) the periods to which the reports are to relate.

*Schedule 1,
para
27(1)(2)(3)* **16.4** The Trust will give information as to its forward planning in respect of each financial year to Monitor. This information is to be prepared by the Board of Directors, who must have regard to the views of the Board of Governors (para 9.7.7 above).

17. Indemnity

17.1 Members of the Board of Governors and the Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

18. Instruments etc

*Schedule 1,
para 29(2)* **18.1** A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

*Schedule 1,
para 29(1)* **18.2** The Trust will have a seal, but this is not to be affixed except under the authority of the Board of Directors.

19. Dispute Resolution Procedures

19.1 The Trust is to establish appropriate dispute resolution procedures with its employees, contractors and members. These are to be approved by the Board of Directors and ratified by the Board of Governors.

The Trust Secretary shall be the custodian of membership documentation and the membership data base. The Trust Secretary shall be responsible dealing with and queries or disputes regarding individual membership.

19.2 The Trust will establish appropriate resolution procedures for any dispute of a legal or corporate board responsibility nature, which may arise between the Board of Governors and the Board of Directors. This is set out in annex 4.

Such a dispute shall not place any limitation on the Trust to act. However, the dispute resolution procedure may be used to verify, after the event, any dispute over the exercise of power.

20. Amendment to the Constitution

Section 8

20.1 The Trust may make amendments to this Constitution with the approval of Monitor.

20.2 No proposals for amendment of this Constitution will be put to Monitor unless it has been approved by three-quarters of the Board of Governors present and voting at a general meeting.

*Section 25,
section 27
and section
28(2)*

21. Dissolution of the Trust

21.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2003 Act.

AREA OF THE TRUST

The area of the Trust is that area defined by the electoral wards of Sunderland and North Easington.

Public Constituencies of the Trust

Name of Constituency	Area	Minimum Number of members	Number of Governors
Sunderland	All of the electoral wards of Sunderland	100	7
Easington	The northern electoral wards of Easington identified below: Seaham North Seaham Harbour Murton East Murton West Easington Village & South Hetton Easington Colliery Dawdon Deneside	20	2

PRACTICE AND PROCEDURE FOR MEETINGS

INTRODUCTION: City Hospitals Sunderland NHS Foundation Trust in line with its constitution is to adopt Standing Orders for the conduct of its meetings and business.

The Title of the Trust for the purposes of all legal documents is "City Hospitals Sunderland NHS Foundation Trust" which shall be used for all purposes.

The Trust will function as a corporate body, whose role will be to address the key managerial and strategic issues facing the Trust in carrying out its statutory functions.

PART 1: TRUST BOARD OF DIRECTORS

1. MEETINGS

- 1.1 The Chairman may call a meeting of the Board of Directors at any time. If the Chairman is requested and refuses or fails to call a meeting, on receipt of a written request, within seven days signed by one third of the whole number of Directors, one third or more of the Directors may call a meeting.
- 1.2 Ordinary meetings of the Board of Directors in public shall be held at regular intervals at such times and places as the Board may determine.
- 1.3 The public and representatives of the press shall be admitted to public meetings of the Board of Directors, subject to the direction of the Chairman (or vice-Chairman), but shall be required to withdraw for a specified period if the Board resolves that this is in the public interest (due to the confidential nature of the business) or to maintain public order. Sections 1(2) and 1(8) of the Public Bodies (Admission to Meetings) Act 1960 refer.
- 1.4 No recording at public meetings shall be allowed, other than in writing, and no oral reporting of meetings as they proceed may take place without the prior agreement of the Board.
- 1.5 At a general meeting in public held no later than 30 September, the Directors will present the Trust's audited accounts and annual report and any report on the accounts to the Board of Governors for their consideration.

2. CHAIRMAN OF MEETINGS

- 2.1 At any meeting of the Board of Directors the Chairman, if present, shall preside.
- 2.2 If the Chairman is absent from the meeting, the Vice-Chairman, if present, shall preside.
- 2.3 If the Chairman and Vice-Chairman are absent, such non-executive Director as the members present shall choose, shall preside.

3. VICE-CHAIRMAN

- 2.1 The Board of Directors shall elect a non-executive director other than the Chairman, to be Vice-Chairman for a period of one year or, where the period of his directorship during which he is elected has less than a year to run, for the remainder of such period.

Provided that any director so elected may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman. The Board of Directors shall thereupon elect another Vice-Chairman in accordance with the provisions of this Standing Order.

4. NOTICE OF MEETINGS

- 4.1 Before each meeting of the Board of Directors a notice of the meeting, specifying the business proposed to be transacted thereat, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf, shall be delivered to every director, at their usual place of residence, so as to be available to such director at least seven clear days before the meeting:

- 4.2 Provided that want of service of such notice on any director shall not affect the validity of a meeting; and

- 4.3 Provided also that, in the case of a meeting called by directors in default of the Chairman, the notice shall be signed by those directors and no business shall be transacted at the meeting other than that specified in the notice.

5. RECORD OF ATTENDANCE

The names of directors present at the meeting shall be recorded.

6. QUORUM

No business shall be transacted at a Board of Directors meeting unless at least one-third of the whole number of directors are present, including at least one executive and one non-executive director.

7. MINUTES

- 7.1 The minutes of the proceedings of a meeting shall be drawn up and entered in a file kept for that purpose and shall be signed at the next ensuing meeting by the person presiding thereat.

- 7.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate on matters arising from the minutes.

8. NOTICE OF MOTION

Subject to the provisions of section 9. below, a director desiring to move a motion shall send a notice thereof at least ten clear days before the meeting to the Trust Secretary, who shall

insert in the agenda for the meeting all notices so received that are in order. This paragraph shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting. (See paragraph 9.3)

9. MOTIONS

9.1 All motions and amendments to resolutions must have a proposer and seconder otherwise they shall not be discussed or put to a meeting.

9.2 Right to Reply

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

9.3 Motions which may be Moved During Debate

When a motion is under debate or immediately prior to discussion no other motions shall be moved except the following:-

9.3.1 to amend the motion;

9.3.2 to adjourn the discussion or the meeting;

9.3.3. to proceed to the next business;

9.3.4 to appoint an ad hoc committee to deal with a specific item of business;

9.3.5 that the question be now put to a motion under section 1(2) of the Public Bodies (Admission to Meetings) Act 1960, to exclude the public (including the press);

10. MOTION TO RESCIND A RESOLUTION

Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months, shall bear the signature of the director who gives it and also the signature of two other directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any director other than the Chairman to propose a motion to the same effect within six months.

11. CHAIRMAN'S RULING

The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and his interpretation of the Standing Orders shall be final. In this interpretation he shall be advised by the Chief Executive and/or Trust Secretary and in the case of Standing Financial Instructions by the Director of Finance.

12. VOTING

12.1 Every question at a meeting, which the Board of Directors agrees should be put to the vote, shall be determined by a majority of the votes of the directors present. In the case of an equality of votes, the Chairman shall have a second and casting vote.

- 12.2 All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by show of hands provided that, upon any question the Chairman may direct, or it may be proposed, seconded and carried that a vote be taken by paper ballot.
- 12.3 If at least three directors so request, the voting on any question may be recorded so as to show how each director present and voting gave his vote.
- 12.4 If a director so requests, his vote shall be recorded by name.
- 12.5 In no circumstances may an absent director vote by proxy.

13. INTEREST OF DIRECTORS IN CONTRACTS AND OTHER MATTERS

- 13.1 A register of directors' interests will be held by the Trust and will be made available for inspection on request.
- 13.2 Subject to the following provisions of this Standing Order, if a director 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, he 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.
- 13.3 The Trust may exclude a director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he has a pecuniary interest, direct or indirect, is under consideration.
- 13.4 The Trust may, subject to any terms set by the Regulator, terminate the appointment of any non-executive director who fails, as required, to declare a pecuniary interest, and in the case of an executive director who fails to declare an interest or is found to have used the position or knowledge for private advantage, may take disciplinary action leading to his dismissal.
- 13.5 The Regulator may, subject to conditions as he may think fit to impose, remove any disability in any case in which it appears to him in the interests of the National Health Service that the disability should be removed.
- 13.6 Any remuneration, compensation or allowances payable to a Chairman or other non-executive director in accordance with the remuneration and allowances and other terms and conditions of office decided by the Board of Governors, shall not be treated as pecuniary interest for the purpose of this regulation.
- 13.7 A director shall be treated, subject to Standing Order 13.4 and the next following paragraphs, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:-

- 13.7.1 he or a nominee is a member of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- 13.7.2 he is a partner, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed to be also the interest of the other.
- 13.8 The Chairman or a director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:-
- 13.8.1 of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body;
- 13.8.2 of an interest of his or of any company, body or person with which he is connected as mentioned in Standing Order 13.6 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of, or in voting on, any question with respect to that contract or matter.
- 13.9 Where the Chairman or a director has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £1,000 or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and if the share capital is of more than one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- 13.10 All existing directors and initially appointed or elected governors shall declare relevant and material interests as set out in section 11.3 of the Trust's constitution. Any directors or governors appointed or elected subsequently shall do so on appointment or election. The Trust Secretary shall maintain a register of directors and governors interests.

14. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

- 14.1 Subject to any directions by the Regulator, the Board of Directors may, and if directed as aforesaid shall, appoint committees of the Board of Directors, or together with one or more NHS Foundation Trusts, NHS Trusts, PCT or other statutory partner organisations, appoint joint committees. They may consist in either case wholly or partly of persons who are not directors of the Trust.
- 14.2 A committee or joint committee appointed under this regulation may, subject to such directions as may be given by the Regulator or the appointing Board of

Directors, appoint sub-committees consisting wholly or partly of persons who are not members of the committee or joint committee.

14.3 Such committees appointed in accordance with Sections 14.1 and 14.2 shall continue until such time as the Board of Directors agrees to their disbandment.

14.4 Composition of Committees

The Chairman and Vice-Chairman of the Board of Directors shall be ex officio members of such committees as the Board of Directors may resolve.

14.5 Proceedings in Committee to be Confidential

14.5.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded action on that matter.

14.5.2 A director or a member of a committee, shall not disclose any matter reported to the Board of Directors or committee, if the Board of Directors or committee shall resolve that it is confidential.

14.6 Chairman of Committee

Every committee shall have a Chairman, appointed by the Trust Chairman.

14.7 Quorum of Committees

Except where approved by the Board of Directors, business shall not be transacted at any meeting of any committee of the Trust unless at least one third of the whole number of the committee is present provided that in no case shall the quorum of the committee be less than two members.

PART 2: BOARD OF GOVERNORS

1. MEETINGS

- 1.1 The Chairman may call a meeting of the Board of Governors at any time. If the Chairman is requested and refuses or fails to call a meeting, on receipt of a written request, within seven days signed by one third of the whole number of Governors, one third or more of the Governors may call a meeting.
- 1.2 Ordinary meetings of the Board of Governors shall be held in public and at regular intervals at such times and places as the Board of Governors may determine.
- 1.3 The public and representatives of the press shall be admitted to public meetings of the Board of Governors, subject to the direction of the Chairman (or vice-Chairman), but shall be required to withdraw for a specified period if the Board resolves that this is in the public interest (due to the confidential nature of the business) or to maintain public order. Sections 1(2) and 1(8) of the Public Bodies (Admission to Meetings) Act 1960 refer.
- 1.4 No recording at public meetings shall be allowed, other than writing, and no oral reporting of meetings as they proceed may take place without the prior agreement of the Board.
- 1.5 At a general meeting held by 30 September in each year, the Trust's Directors shall present the Trust's audited accounts and annual report and any report on the accounts to the Board of Governors.

2. CHAIRMAN AND VICE-CHAIRMAN

- 2.1 The Chairman of the Trust Board of Directors will act as Chairman of the Board of Governors and in his absence the Vice-Chairman of the Board of Directors will act as Chairman of the Board of Governors.

3. CHAIRMAN OF MEETINGS

- 3.1 At any meeting of the Board of Governors the Trust Chairman, if present, shall preside. The Chairman shall have a casting vote but no vote otherwise.
- 3.2 If the Chairman is absent from the meeting, the Trust Vice-Chairman, shall preside.
- 3.3 Should there be a vote on any matter relating to the Chairman directly, (which for the avoidance of doubt would not include an issue affecting other members of the Board of Directors), the casting vote would be exercised by the Vice Chairman of the Board of Directors. Should there be a vote on any matter relating to the non-executive directors directly, neither the Chairman nor the Vice Chairman should preside. In such circumstances, the Board of Governors shall appoint a deputy Chairman from the governors to preside over and to have the casting vote on such matters.

4. NOTICE OF MEETINGS

- 4.1 Before each meeting of the Board of Governors, a notice of the meeting, specifying the business proposed to be transacted thereat, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf, shall be delivered to every governor, at their usual place of residence, so as to be available to such governor at least seven clear days before the meeting:
- 4.2 Provided that want of service of such notice on any governor shall not affect the validity of a meeting; and
- 4.3 Provided also that, in the case of a meeting called by governors in default of the Chairman or in his absence the Vice Chairman, the notice shall be signed by those governors who called the meeting, being no less than one third of the whole governors and no business shall be transacted at the meeting other than that specified in the notice.

5. RECORD OF ATTENDANCE

The names of governors present at the meeting shall be recorded.

6. QUORUM

No business shall be transacted at a Board of Governors meeting unless at least one-third of the whole number of governors are present, including at least three governors from the public/patients' constituencies and two governors from the staff constituency.

7. MINUTES

- 7.1 The minutes of the proceedings of a meeting shall be drawn up and entered in a file kept for that purpose and shall be signed at the next ensuing meeting by the person presiding thereat.
- 7.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

8. NOTICE OF MOTION

Subject to the provisions of Section 9. below, a governor desiring to move a motion shall send a notice thereof at least ten clear days before the meeting to the Trust Secretary, who shall insert in the agenda for the meeting all notices so received that are in order. This paragraph shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting. (See paragraph 9.3)

9. MOTIONS

9.1 All motions and amendments to resolutions must have a proposer and seconder otherwise they shall not be discussed or put to a meeting.

9.2 Right to Reply

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

9.3 Motions which may be Moved During Debate

When a motion is under debate or immediately prior to discussion no other motions shall be moved except the following:-

9.3.1 to amend the motion;

9.3.2 to adjourn the discussion or the meeting;

9.3.3 to proceed to the next business;

9.3.4 to appoint an ad hoc committee to deal with a specific item of business;

9.3.5 that the question be now put to a motion to exclude the public (including the press);

10. MOTION TO RESCIND A RESOLUTION

Notice of motion to rescind any resolution, (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the governor who gives it and also the signature of two other governors. When any such motion has been disposed of by the Board of Governors, it shall not be competent for any governor other than the Chairman to propose a motion to the same effect within six months.

11. CHAIRMAN'S RULING

The decision of the Chairman on questions of order, relevancy and regularity (including procedure on handling motions) and his interpretation of the Standing Orders shall be final. In this interpretation he shall be advised by the Chief Executive and/or the Trust Secretary and in the case of Standing Financial Instructions by the Director of Finance.

12. VOTING

12.1 Every question at a meeting, which the Board of Governors agrees should be put to the vote, shall be determined by a majority of the votes of the governors present. In the case of an equality of votes, the Chairman shall have a casting vote.

12.2 All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by show of hands provided that, upon any question the Chairman may direct, or it may be proposed, seconded and carried that a vote be taken by paper ballot.

- 12.3 If at least three governors so request, the voting on any question may be recorded so as to show how each governor present and voting gave his vote.
- 12.4 If a governor so requests, his vote shall be recorded by name.
- 12.5 In no circumstances may an absent governor vote by proxy.

**ELECTION PROCESS FOR BOARD OF
GOVERNORS OF CITY HOSPITALS SUNDERLAND
NHS FOUNDATION TRUST**

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DEFINITIONS

In these rules unless otherwise indicated:

- “the Trust” means City Hospitals Sunderland NHS Foundation Trust
- “the Trust secretary” means the Trust Secretary of City Hospitals Sunderland NHS Foundation Trust
- “RO” means the Returning Officer
- “the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003
- “the Regulator” means the Independent Regulator for NHS Foundation Trusts

1. APPOINTMENT OF RETURNING OFFICER

- i) Every applicant NHS Trust for Foundation Trust status must appoint a Returning Officer for the election of governors for the Foundation Trust. To be appointable, the Returning Officer must not:
- a) be a member of the Trust;
 - b) be an employee of the Trust;
 - c) be a director of the Trust;
 - d) be employed by or on behalf of a person who has been nominated for election.
- ii) For its 2004 elections, the Trust appointed the Returning Officer of Sunderland City Council who is Returning Officer for the Election of Councillors of the district. For each subsequent election the Trust will again appoint a Returning Officer who shall meet the requirements set out in 1(i) above.
- iii) Subject to 1(i) above, the Returning Officer may appoint a deputy and other staff to enable him to discharge any or all of the duties imposed upon him.
- iv) The Trust will make provisions to reimburse the Returning Officer in respect of his reasonable expenses in employing staff at each stage of the election under these rules.
- v) An Election will not be declared invalid by reason of any act or omission by the Returning Officer or any other person in breach of his official duties if it appears the election was conducted substantially in accordance with the rules.
- vi) If the election is required to be re-run, the Trust will be liable for all of the costs involved.

2. DUTIES OF THE TRUST

The Trust is to co-operate with the Returning Officer in the exercise of his functions under these rules.

3. TIMETABLE FOR ELECTION

i)

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.

- ii) (1) Computation of time – 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.

4. NOTICE OF ELECTION

i)

The Returning Officer is to publish a notice of 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) where nomination papers can be obtained from and at the place and times;
- d) the date of the election and that (if contested) the election will be by post only;

- e) the date and time ballot papers must be returned in a contested election;
 - f) where completed nomination and ballot papers must be returned to and at the place and times;
 - g) the contact details of the Returning Officer.
- ii) The Notice of Election will be publicly displayed in the office of the Trust and in the Returning Officer's Elections Office and Elections Office at Easington District Council.
 - iii) A copy of the relevant notice of election will be sent by post to each qualified member included at that time in the register supplied to the Returning Officer.

5. NOMINATION OF CANDIDATES

- i) Each candidate must be nominated on a separate nomination paper.
- ii) The Returning Officer is to supply any member with as many nomination papers as may be required at the time and place for nominations.
- iii) Prepare a nomination paper for signature at the request of any member.

But it is not necessary for a nomination to be on a form supplied by the Returning Officer.

- iv) Delivery of nominations must be in person to the Elections Office, Room 3.14, Civic Centre, Sunderland.
- v) The nomination paper shall state the:
 - a) Constituency (and class where appropriate) the candidate is a member of;
 - b) candidates full names;
 - c) contact address in full

5a. Subscription of a Nomination Paper

- i) The nomination paper should be subscribed by at least two supporters within the same constituency or class within a constituency to which the candidate belongs.
- ii) Supporters must state their constituency or class within a constituency on the nomination paper and must not subscribe more than one nomination paper.
- iii) If a member subscribes more than one nomination paper in contravention of (ii) then the second and any further subscriptions received by the Returning Officer are invalid.
- iv) Where a member subscribes a nomination paper and the candidate nominated in the paper dies or withdraws before the paper is received by the Returning Officer, then nothing prevents that member from subscribing the nomination paper of another candidate.

6. DECLARATIONS

6a. Declaration of Interests

i) The nomination paper must state:

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

6b. Declaration of eligibility

- i) The nomination paper must include a declaration made by the candidate
 - a) of the particulars of his or her qualification to vote as a member of the constituency or class within a constituency for which the election is being held; and
 - b) that he or she is not prevented from being a member of the Board of Governors by section 8.12.1 of the constitution of the NHS Foundation Trust.

6c. Signature of Candidate

- i) The nomination paper must be signed and dated by the candidate, indicating that:
 - a) the candidate consents to being nominated in the paper;
 - b) the statement of the interests of the candidate in the paper, as required by rule 6a is true and correct; and
 - c) the declaration of eligibility required by rule 6b is true and correct.

7. DECISIONS AS TO VALIDITY OF NOMINATION PAPER

- i) Where the candidate's nomination paper is delivered to the Returning Officer in accordance with these rules, the candidate shall be deemed to stand for election as nominated, unless and until:
 - a) the Returning Officer decides the nomination paper is invalid;
 - b) proof is given to the Returning Officer that the candidate has died; or
 - c) the candidate withdraws.
- ii) The Returning Officer can hold a nomination paper invalid only on one of the following grounds:
 - a) that the paper is not received on or before the final date for return of nomination papers, as specified in the Notice of Election;
 - b) that the paper does not contain the candidates particulars as required by rule 5;
 - c) that the paper is not subscribed as required by Rule 5a;

- d) that the paper does not contain a declaration of the interests of the candidate, as required by rule 6a;
 - e) that the paper does not include a declaration of eligibility as required by rule 6b;
 - f) that the paper is not signed and dated by the candidate as required by rule 6c; or
 - g) the paper is illegible.
- iii) 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.
 - iv) Where the Returning Officer decides that a nomination paper is invalid he or she must endorse this on the paper, stating the reason for the decision.
 - v) The Returning Officer is to send notice of the decision as to whether a nomination paper is valid or invalid to the candidate, at the contact address given in the candidate's nomination paper.

8. PUBLICATION OF STATEMENT OF NOMINATED CANDIDATES

- i) The Returning Officer will prepare and publish a statement showing the candidates who are standing for election as nominated
- ii) The statement must show
 - a) the name, contact address and constituency or class within a constituency of each candidate standing as nominated; and
 - b) the statement of interests of each candidate standing as nominated, as given in their nomination paper.
- iii) The statement must list the candidates standing for election in surname alphabetical order, or if two or more have the same name, alphabetical by their other names.
- iv) If a candidate has been nominated by more than one nomination paper the Returning Officer is to take the particulars required by this rule from one of the papers selected by the candidate, or by the Returning Officer in default of the candidate.
- v) A copy of the statement of nominated candidates for each constituency or class within a constituency shall be:
 - a) displayed at the Elections Office of the Returning Officer;
 - b) displayed at the Trust Headquarters;
 - c) displayed at the Elections Office of Easington District Council;
 - d) posted to every candidate to the contact address given on their nomination paper.
- vi) The Returning Officer must send a copy of the statement of nominated candidates and copies of nomination papers to the Trust Secretary as soon as is practicable after publishing this statement.

9. INSPECTION OF STATEMENT OF NOMINATED CANDIDATES AND NOMINATION PAPERS

- i) During the hours of 9.00 a.m. to 5.00 p.m. any member of the public may inspect and take extracts from or take copies of the statement of nominated candidates and nomination papers held by the Trust Secretary.
- ii) There will be no charge for this.

10. WITHDRAWAL OF CANDIDATES

- i) Any candidate may withdraw their candidature by delivering a notice to the Returning Officer at the place for the delivery of nomination papers, signed by the candidate and attested by one witness.

11. NOMINATION IN MORE THAN ONE CONSTITUENCY OR CLASS

- i) If a candidate is nominated in more than one constituency or class, they must withdraw from all those constituencies or classes except one.
- ii) If a candidate fails to do this then the Returning Officer shall withdraw their candidature from all constituencies or classes.

12. METHOD OF ELECTION

- i) 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 these rules.
- ii) 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 these rules.
- iii) 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 these rules; and
 - b) the Returning Officer is to order a new election to fill any vacancy which remains unfilled on a day appointed by him or her in consultation with the Trust.

13. POLL TO BE TAKEN BY BALLOT

- i) The votes at the poll must be given by ballot.

- ii) The votes are to be counted and the result of the poll determined in accordance with these rules.

14. BALLOT PAPER

- i) 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.
- ii) Every ballot paper must specify -
 1. the name of the Trust;
 2. the constituency, or class within a constituency, for which the election is being held;
 3. the number of members of the Board of Governors to be elected from that constituency, or class within that constituency;
 4. the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
 5. instructions on how to vote
 6. that the ballot paper is to be returned by post, with the address for its return and the date of the close of the poll, and
 7. the contact details of the Returning Officer.
- iii) Each ballot paper must have a unique identifier.
- iv) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

15. SECURITY STATEMENT

- i) A security statement must be issued with each ballot paper.
- ii) The security statement 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) 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.
- iii) The security statement 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.

- iv) The security statement 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 invalid.

16. ELIGIBILITY TO VOTE

- i) The Trust is to provide the Returning Officer with a list of the members and mailing address where ballot paper is to be sent of the constituency or class within a constituency for which the election is being held who do not come within 16(ii) below (the list of eligible voters) as soon as is reasonably practicable after the final date for delivery of notices of withdrawals by candidates from an election.
- ii) An individual who becomes a member of the Trust
 - (a) on the final date for the delivery of notices of withdrawals by candidates from an election; or
 - (b) on any subsequent day of the election is not eligible to vote in that election.

17. MISTAKES ON THE REGISTER

- i) Nothing prevents the Returning Officer from amending the list or adding a name or deleting a name on the register to be used at the election, because of an administrative error.

18. NOTICE OF POLL

- i) The Returning Officer is to publish a Notice of Poll stating:
 - (a) the name of the Trust;
 - (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, 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 by post;
 - (f) the address for return of the ballot papers and the date of the close of poll;
 - (g) the address and final dates for applications for replacement ballot papers; and
 - (h) the contact details of the Returning Officer.

19. DISTRIBUTION OF BALLOT PAPERS

- i) As soon as is reasonably practicable on or after the publication of notice of poll, all registered members named in the list of eligible voters will receive from the Returning Officer:

- a) a ballot paper;
- b) ballot paper envelope;
- c) a security statement;
- d) a covering envelope
- e) Candidate's personal election statement of not more than 200 words

19a. Ballot Paper Envelope and Covering Envelope

- i) 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.
- ii) 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.
- iii) 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 security statement, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

20. RETURN OF BALLOT PAPERS

- i) The Returning Officer will make available sealed ballot boxes for the hand delivery of ballot papers at:
 - (a) the Returning Officer, Elections Office, Room 3.14, Civic Centre, Sunderland;
 - (b) the Elections Office, Easington District Council;
 - (c) the Trust Headquarters, Sunderland Royal Hospital, Kayll Road, Sunderland.
- ii) Ballot papers must be returned to reach the Returning Officer by post or to one of the drop off points identified at b) and c) above, by the close of poll to be included in the count.
- iii) Ballot papers received after this time will not be included in the count.
- iv) Returned ballot papers will be held in a secure location by the Returning Officer until either:
 - a) verification; or
 - b) counting of votes.

21. REPLACEMENT BALLOT PAPERS

21a. Spoilt or Non-received Ballot Papers

- i) If a voter has inadvertently dealt with his ballot paper in such a manner that it cannot be conveniently used as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the Returning Officer for a replacement ballot paper.
- ii) On receiving an application, the Returning Officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he can obtain it.
- iii) 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 security statement attached to the original ballot paper has not been returned
- iv) 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.

21b. Lost Ballot Papers

- i) Where a voter has not received his ballot paper by the fourth day before the close of poll, that voter may apply to the Returning Officer for a replacement ballot paper.
- ii) The Returning Officer may not issue a replacement ballot paper for a lost ballot paper unless he:
 - a) is satisfied as to the voters identity;
 - b) has no reason to doubt that the voter did not receive the original ballot paper; and
 - c) has ensured the original security statement attached to the original ballot paper has not been returned.
- iii) The Returning Officer shall make a list of all ballot papers replaced which will include:
 - a) the name of the voter; and
 - b) the details of the unique identifier of the replacement ballot paper.
- iv) A replacement security statement set out in accordance with these rules, must be issued with each replacement ballot paper.

21c. Double Voting and Personation

If a person applies for a replacement ballot paper and a security statement 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 in 18a(i) and 18b (ii), the Returning Officer is also satisfied that the person has not already

voted in the election notwithstanding the fact that a security statement has already been received by the Returning Officer in the name of that voter.

21d. Validity of Ballot Paper

- i) A ballot paper shall not be taken to be duly returned unless the Returning Officer is satisfied that it has been returned before the close of the poll, with a security statement that has been correctly completed, signed and dated.
- ii) Where the Returning Officer is satisfied that paragraph (i) has been fulfilled, he or she is to -
 - (a) put the security statement in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- iii) Where the Returning Officer is not satisfied that paragraph (i) has been fulfilled, he is to -
 - (a) mark the ballot paper “disqualified”,
 - (b) if there is a security statement accompanying the ballot paper, mark it as “disqualified” and attach it to 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.

22. VOTERS WHO REQUIRE ASSISTANCE

- i) If a voter considers they have difficulty with voting, they may ask the Returning Officer for assistance who will make such arrangements to enable that voter to vote.

23. VERIFICATION

- i) The Returning Officer may verify returned ballot papers in advance of the close of poll.
- ii) Candidates will be given 48 hours notice if the Returning Officer does verify in advance and each candidate will:
 - a) be advised where the verification will take place;
 - b) who can attend;
 - c) that a substitute acting on behalf of the candidate can be appointed.
- iii) a) During verification procedures the Returning Officer will open the covering envelope or any other envelope containing a security statement, a ballot paper envelope or ballot paper and examine the security statement and where the covering envelope does not contain the security statement separately, the Returning Officer shall open the ballot paper envelope to ascertain whether the security statement is inside;

- b) If a security statement is not signed and dated as required the Returning Officer may (where time permits) return the statement to the member for signature;
 - c) Where security statements are returned to the member for completion the Returning Officer will retain the ballot paper in a secure location, which will be marked provisionally rejected until such time as the security statement is received by the Returning Officer in accordance with these rules;
 - d) Any ballot paper or security statement received separately by the Returning Officer can be compared with any ballot paper or security statement held by the Returning Officer as provisionally rejected, matched and included in the count.
- iv) Verified ballot papers will be held in a secure location until the counting of votes.

23a. Security Statements but No Ballot Paper

- i) Where the Returning Officer receives a security statement but no ballot paper, the Returning Officer is to -
 - (a) mark the security statement “disqualified”,
 - (b) record the name of the voter in the list of disqualified documents, indicating that a security statement was received from the voter without a ballot paper; and
 - (c) place the security statement in a separate packet.

24. ATTENDING COUNTING OF VOTES

- i) The Returning Officer will make arrangements to count the votes as soon as practicable after the close of poll.
- ii) Candidates will be given 48 hours notice in writing of:
 - (a) places and time of count;
 - (b) count procedures;
 - (c) who can attend:
 - i) candidate;
 - ii) substitute acting on behalf of the candidate;
 - iii) companion;
 - iv) representatives of the Trust;
 - v) Returning Officer's staff.
- iii) The Returning Officer will give those present all reasonable facilities to oversee the count procedures and to ensure that the ballot papers are correctly sorted.

25. THE COUNT

- i) The Returning Officer shall in the presence of the candidates, count the number of ballot papers that have been returned.
- ii) The Returning Officer shall not count any papers handed in or received after the close of poll.
- iii) The Returning Officer shall count the number of votes marked for each candidate.
- iv) The Returning Officer shall reject and not count any ballot paper that:
 - (a) has more votes marked on it than there are vacancies to be filled;
 - (b) is unmarked or void for uncertainty;
 - (c) has writing or marking on the ballot paper, so that the identity of the member can be identified;
 - (d) does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced.
- v) A ballot paper will not be rejected if it is clear to the Returning Officer that the intention of the voter is clear.
- vi) Where a voter is entitled to vote for more than one candidate and the ballot paper contains uncertain and good votes, the Returning Officer will count as many of the votes where the Returning Officer is clear as to the intention of the voter.

26. DECISION ON BALLOT PAPERS

- i) The Returning Officer will consult with candidates (or substitutes) present about doubtful ballot papers. However, the decision to include a vote or reject it from the count will be made by the Returning Officer and his decision shall be final.

27. RECOUNT

- i) All candidates (or substitutes) present at the count will be shown a copy of the total number of votes given to each candidate before it is declared.
- ii) Any candidate may ask the Returning Officer to recount the votes.
- iii) The Returning Officer may refuse to recount the votes if, in his view, it is unreasonable to do so.

28. EQUALITY OF VOTES

- i) If after any count or recount there is an equality of votes between candidates for the last member to be elected, the Returning Officer shall decide between the candidates by lot and proceed as if the candidate on who the lot falls, had received an additional vote.

29. DECLARATION OF RESULT FOR A CONTESTED ELECTION

- i) 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 the constitution pursuant to powers conferred on City Hospitals Sunderland NHS Foundation Trust by section 4 (4) of the 2003 Act, to the chairman of the Trust, or
 - (ii) in any other case, to the Trust Secretary: and
 - (c) give public notice of the name of each candidate whom he or she has declared elected.
- (ii) The Returning Officer is to declare -
 - (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 26 (iv)

30. DECLARATION OF RESULT FOR AN UNCONTESTED ELECTION

- i) As soon as practicable after the close of withdrawals of candidates from the election the Returning Officer shall:
 - (a) declare the candidate or candidates remaining validly nominated to be elected;
 - (b) give notice to each candidate that they have been duly elected;
 - (c) give written notice to the Trust Secretary of the names and addresses of the candidates elected;
 - (d) give written notice to the Trust Secretary if there are still vacancies in that Constituency or class;

31. FILLING CASUAL VACANCIES/FAILURE TO ACCEPT OFFICE

- i) In the case of:
 - (a) vacancies arising due to an elected governor failing to take up office;
 - (b) vacancies arising during the term of office;such vacancies will be filled:
 - (c) by a by-election for the particular constituency (and class where appropriate) of the elected governor and for a period of office to be determined in advance of the election by the Trust's Board of Governors;

unless:

- (d) there are sufficient elected governors to continue to maintain the minimum legal requirement of a public/patient governor majority, in which case the post will be held open until the next planned election.

32. DISPOSAL OF DOCUMENTS

- i) On completion of the verification and counting of votes the Returning Officer will seal into separate packets all paperwork, envelopes, lists and ballot papers connected with the election including:
 - (a) the disqualified documents, together with the list of disqualified documents inside it;
 - (b) the security statements;
 - (c) the list of spoilt ballot papers;
 - (d) the list of lost ballot papers;
 - (e) the list of eligible voters;
 - (f) the list of tendered ballot papers;and forward to the Trust Secretary.
- ii) After a period of 12 months following the counting of votes, and unless directed otherwise by the Regulator, the Trust will destroy all packets retained by them.
- iii) where:
 - (a) any voting documents are received by the Returning Officer after the close of the poll; or
 - (b) any envelopes are 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 to the Trust Secretary, who will retain them for one year and will be available for public inspection for which a charge can be made (subject to the requirements of section 34 below).

33. APPLICATION FOR INSPECTION OF DOCUMENTS RELATING TO THE ELECTION

- i) The Trust may not allow inspection of, or 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.
- ii) A person may apply to the Regulator to inspect any of the documents listed in (i) 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 section 40.
- iii) 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 Trust must only make the documents available for inspection in accordance with those terms and conditions.
- iv) On an application to inspect any of the documents listed in paragraph (i), –
 - (a) in giving its consent, the Regulator, and
 - (b) in making the documents available for inspection, the Trust 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 –
 - (c) that his or her vote was given, and
 - (d) that the regulator has declared that the vote was invalid.

34. COUNTERMAND OR ABANDONMENT OF POLL ON DEATH OF CANDIDATE

- (i) 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, and

- (b) order a new election, on a date to be appointed by him in consultation with the Trust within the period of 35 days, beginning with the day that the poll was countermanded or abandoned.
- (ii) Where a new election is ordered under paragraph (i), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned.
- (iii) Where a poll is abandoned under paragraph (i)(a), paragraphs (iv) to (ix) are to apply.
- (iv) The Returning Officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 20b and 22, and is to make up separate sealed packets in accordance with rule 32.
- (v) 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.
- (vi) 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 Trust to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- (vii) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (iv) to (vi), the Returning Officer is to deliver them to the Trust Secretary, and rules 32 and 33 are to apply.

35. ELECTION EXPENSES

Any expenses incurred, or payments made, for the purposes of an election which contravene these rules are an electoral irregularity, which may only be questioned in an application to the regulator under section 40 of these rules.

35a. Election expenses incurred 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.

35b. Election expenses incurred by other persons

- (i) 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.
- (ii) Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 37 and 38.

36. PUBLICITY ABOUT ELECTION BY THE TRUST

- (i) The Trust 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.
- (ii) Any information provided by the Trust about the candidates, including information compiled by the Trust under rule 39, 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.
- (iii) Where the Trust proposes to hold a meeting to enable the candidates to speak, the Trust must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the Trust 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.

37. INFORMATION ABOUT CANDIDATES FOR INCLUSION WITH VOTING DOCUMENTS

- (i) The Trust must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 18 of these rules.
- (ii) The information must consist of a statement submitted by the candidate of no more than 200 words.

38. MEANING OF “FOR THE PURPOSES OF AN ELECTION”

- (i) 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.
- (ii) 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.

39. APPLICATION TO QUESTION AN ELECTION

- (i) An application alleging a breach of these rules, including an electoral irregularity under election expenses and publicity, may be made to the Regulator.
- (ii) An application may only be made once the outcome of the election has been declared by the Returning Officer.
- (iii) 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.
- (iv) 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.
- (v) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (vi) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- (vii) The Regulator shall delegate the determination of an application to a person or persons to be nominated for that purpose by the Regulator.
- (viii) The determination by the person or persons nominated in accordance with rule 40 (vii) shall be binding on and shall be given effect by the Trust, the applicant, the members of the constituency (or class within a constituency) and the candidate (if any) to which the application relates.
- (ix) The Regulator may prescribe rules of procedure for the determination of an application including costs.

40. **SECRECY**

- (i) 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:
 - (c) the name of any member of the Trust who has or has not been given a ballot paper or voted,
 - (d) the unique identifier on any ballot paper,
 - (e) the candidate for whom any person has voted for on any particular ballot paper.
- (ii) No person may obtain or attempt to obtain information as to the candidate 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.
- (iii) The Returning Officer is to make such arrangements as he or she thinks fit to ensure that the individuals that are affected by this provision are aware of the duties it imposes.

41. **PROHIBITION OF DISCLOSURE OF VOTE**

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

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

43 **DELAY IN POSTAL SERVICE THROUGH INDUSTRIAL ACTION OR UNFORSEEN EVENT**

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

- (g) the delivery of the documents in rule 18, 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.

LISTS OF FORMS AND NOTICES

1. Notice of Election
2. Nomination Paper
3. Validity of Nomination
4. Statement of Nominated Candidates
5. Withdrawal of Candidates
6. Notice of Poll
7. Ballot Paper
8. Leaflet with Ballot Paper
9. Security Statement and Instructions How to Vote
10. Envelopes
11. Attendance at Verification
12. Attendance at Count
13. Declaration of Secrecy
14. Declaration of Result
15. Notification of Result to The Trust
16. Uncontested Election
17. Appointment of Deputy Returning Officer
18. List of Candidates

GOVERNORS AND DIRECTORS: COMMUNICATION AND DISPUTE RESOLUTION

1. Summary

This annex describes the processes intended to ensure a successful and constructive relationship between the Board of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Foundation Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Board of Governors and the Board of Directors.

2. Informal Communications

Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Foundation Trust and the services it provides.

The Chairman of the Board of Governors and the Board of Directors will encourage informal methods of communication including:-

- ◆ Participation of the Board of Directors in the induction, orientation and training of Governors.
- ◆ Discussions between Governors and the Chairman, the Chief Executive or a Director, through the office of the Secretary to the Board.
- ◆ Involvement in membership recruitment and briefings at public events organised by the Foundation Trust.

3. Formal Communication

Some aspects of communication are defined by the constitutional roles and responsibilities of the Board of Governors and the Board of Directors respectively. Communications initiated by the Board of Governors, and intended for the Board of Directors, will be conducted as follows:-

- ◆ Specific requests by the Board of Governors will be made through the Chairman, to the Board of Directors;
- ◆ Any Governor has the right to raise specific issues at a duly constituted meeting of the Board of Governors through the Chairman. In the event of disagreement, two thirds of the Governors present must approve the request. The Chairman will raise the matter with the Board of Directors and provide the response to the Board of Governors.
- ◆ Annual joint meetings will take place between the Board of Governors and the Board of Directors.

The Board of Directors will request the Chairman to seek the views of the Board of Governors:-

- ◆ on the Board of Directors proposal for the Strategic Direction, and the Annual Patient Services Plan.
- ◆ on the Board of Directors proposals for developments.

- ◆ on their involvement in service reviews and evaluation.
- ◆ on proposed changes, plans and developments for the Foundation Trust.

The Board of Directors will also present for the approval of the Board of Governors, the Annual Accounts, Annual Report and Auditors Report.

The following formal methods of communication will also be used:-

- ◆ Attendance by the Board of Directors at a meeting of the Board of Governors.
- ◆ Provision of formal reports or presentations by Executive Directors to a meeting of the Board of Governors.
- ◆ Inclusion of minutes for information on the Agenda of a meeting of the Board of Governors.
- ◆ Reporting the views of the Board of Governors to the Board of Directors through the Chairman or Vice Chairman.

4. Resolving Conflict

The Board of Governors and the Board of Directors must be committed to develop and maintain a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

If through informal efforts the Chairman cannot achieve resolution of a disagreement or conflict, the Chairman will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity, and only to follow this procedure if initial action fails to achieve resolution:

- a) The Chairman will call a Resolution Meeting of the members of the Board of Governors and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise two thirds of the membership of the Board of Governors and two thirds of the membership of the Board of Directors. The meeting will be held in private. The Agenda and any papers for the meeting will be issued in accordance with Annex 2. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement.
- b) If a Resolution Meeting of the members of the Board of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
- c) If following the formal Resolution Meeting, and the decision of the Board of Directors, the Board of Governors considers that implementation of the decision will result in the Foundation Trust failing to comply with the Terms of Authorisation, the Board of Governors will refer the specific issue of non-compliance to the Independent Regulator.

The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- a) The Chairman
- b) The Chief Executive

- c) Two thirds of the members of the Board of Governors
- d) Two thirds of the members of the Board of Directors

5. Review of Process

These arrangements will apply for twelve months from the date of formation of the Foundation Trust. The Business Agenda will include a joint meeting of the Board of Governors and the Board of Directors to assess communications, and consider any changes to this procedure that might assist resolution in the event of a conflict between them.