

AUTHORISATION

of

DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

(pursuant to section 35 of the National Health Service Act 2006)



Signature:

Steve Bunker

1 February 2011

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PART 1 Authorisation

1. Monitor (“Monitor”), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 (“**the Act**”) and all other powers exercisable by Monitor, hereby authorises Derbyshire Mental Health Services NHS Trust to become an NHS Foundation Trust (“**the Trust**”), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 February 2011.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

1. Words and expressions used in the Authorisation shall be construed as if they were in an Act of Parliament and the Interpretation Act 1978 applied to them.
2. Any reference to an enactment shall include any re-enactment thereof or amendment thereto.
3. Words and expressions defined in the Act shall have the same meaning when used in this Authorisation.
4. Unless otherwise specified, any reference to a numbered Condition (with or without a suffix letter) or Schedule is a reference to the Condition or Schedule bearing that number in this Authorisation.
5. In construing the provisions of this Authorisation, the heading or title of any Part, Condition or Schedule shall be disregarded.
6. Where any obligation of the Trust is required to be performed by a specified date or within a specified period, and where the Trust has failed so to perform, such obligation shall continue to be binding and enforceable after the specified date or after the expiry of the specified period.
7. In this Authorisation:
 - “ancillary services” means services which support the provision of the mandatory goods and services listed in Schedule 2.
 - “property” is land and buildings owned or leased by the Trust.
 - “the Board of Directors” means the Board of Directors of the Trust.
 - “the provision of goods and services for purposes related to the provision of health care” includes the provision of social care services.
 - “high security psychiatric services” has the same meaning as in section 4 of the Act.

PART 3 Conditions

1. Principal Purpose

The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England. This does not preclude the provision of cross-border services to other parts of the United Kingdom.

2. General duty

The Trust shall exercise its functions effectively, efficiently and economically.

3. Constitution

(1) The Trust may make amendments to its constitution with the approval of Monitor.

(2) The constitution, incorporating any amendments which may be made thereto, is annexed at Schedule 1.

4. Compliance and enforcement

(1) The Trust shall comply with:

any requirements imposed on it under the Act or any other enactment;

the requirement to have regard to the NHS Constitution in performing its NHS functions in accordance with section 2 of the Health Act 2009;

the Conditions of this Authorisation;

the terms of its constitution;

if applicable, directions issued by the Secretary of State with respect to safety and security in connection with the provision of high security psychiatric services; and

the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.

(2) The Trust shall comply with any guidance issued by Monitor, unless Monitor has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.

(3) A failure to comply may result in Monitor taking enforcement action under sections 52, 53 or 54 of the Act.

5. Governance

- (1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.
- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care and other standards

- (1) The Trust shall put and keep in place and comply with arrangements for the purpose of monitoring and improving the quality of health care provided by and for the Trust.
- (2) The Trust shall comply with the healthcare targets and indicators set out in the Compliance Framework (as may be amended from time to time).
- (3) If applicable, the Trust shall comply with any statements of standards with respect to social care services which the Secretary of State may issue from time to time.
- (4) If applicable, the Trust shall comply with any statements of standards with respect to security and risk management which the Secretary of State may issue from time to time.

7. Mandatory Services

- (1) The Trust is required to provide for the purposes of the health service in England the goods and services listed in Schedule 2 in the volumes or amounts specified therein ("**mandatory goods and services**") which goods and services in the volumes or amounts specified are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said goods and services in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force. This requirement includes an obligation to provide any ancillary services, accommodation and other facilities related to said goods and services and which are generally accepted to be required for the effective, efficient and economic provision of said goods and services in the volumes or amounts specified.
- (2) The Trust is required to provide education and training to third parties for the purposes of the health service in England listed in Schedule 3 in the volumes or amounts specified therein ("**mandatory education and training**"), which are to be provided pursuant to a legally binding contract or contracts between the Trust and one or more of the commissioning bodies, or on the understanding that the Trust and the relevant commissioning body or bodies will conclude a legally binding contract or contracts for the provision of said

education and training in the volumes or amounts specified within 12 months of the date on which this authorisation comes into force.

- (3) Monitor reserves the right to vary the goods and services and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(1) and the education and training to third parties and the volumes or amounts thereof which the Trust is required to provide in terms of Condition 7(2), in particular in order to ensure the continuity of local service provision and the fulfilment of local health needs as they may vary from time to time.
- (4) The Board of Directors shall regularly review and shall at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.

8. Authorised Services

- (1) The Trust is authorised to provide goods and services (including education and training, accommodation and other facilities) for purposes related to the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said goods and services and that the provision of said goods and services will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (2) Monitor reserves the right to refuse to authorise specific goods and services in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(1).
- (3) The Trust shall establish and maintain an up to date register of the goods and services referred to in Condition 8(1). With respect to education and training, only education and training provided to third parties shall be included in the register. Accommodation and other facilities do not require to be included in the register of goods and services.
- (4) The Trust shall make the register of goods and services available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.
- (5) The Trust is authorised to carry out research in connection with the provision of health care, subject to written confirmation to Monitor by the Board of Directors that the Board of Directors is satisfied that the Trust has the capacity and the capability to provide said research, that all relevant authorisations with respect to the carrying out of said research have been secured, that the said research will be carried out in accordance with the generally accepted ethical standards and that the said research will not inhibit the provision by the Trust of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2.
- (6) Monitor reserves the right to refuse to authorise research in circumstances where Monitor is not satisfied that the Board of Directors has a proper basis for the written confirmation referred to in Condition 8(5).

- (7) The Trust is authorised to make facilities and staff available for the purposes of education, training or research carried on by others.
- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

- (1) Property needed for the purposes of providing any of the mandatory goods and services referred to in Condition 7(1) and listed in Schedule 2 (including the ancillary services, accommodation and other facilities related thereto) and the mandatory training and education referred to in Condition 7(2) and listed in Schedule 3 is protected.
- (2) The Trust may not dispose of any protected property without the approval of Monitor.
- (3) The Trust shall establish and maintain an asset register in respect of protected property, in accordance with guidance to be issued by Monitor.
- (4) The Trust shall make the asset register available for public inspection on payment of such reasonable fee, if any, as the Trust may determine.

10. Private health care

The proportion of total income of the Trust in any financial year derived from private charges shall not be greater than the percentage set out in Schedule 4.

11. Limit on borrowing

- (1) The total amount of the Trust's borrowing is subject to the limit set out in Schedule 5 and the principles set out in the Prudential Borrowing Code for NHS Foundation Trusts.
- (2) The limit is subject to annual review by Monitor.

12. Financial viability

The Trust shall at all times remain a going concern as defined by relevant accounting standards in force from time to time.

13. Dividend payments on Public Dividend Capital

The Trust shall be required to pay annually to the Department of Health a dividend on its Public Dividend Capital at a rate to be determined from time to time by the Secretary of State.

14. Information

The Trust shall disclose to Monitor and directly to any third parties as may be specified by the Secretary of State the information, if any, specified in Schedule 6 as

may be varied from time to time and such other information as Monitor may from time to time require.

15. Entry and inspection of premises

The Trust shall allow Monitor, any member, officer or member of staff of Monitor, and any agent acting on behalf of Monitor, to enter and inspect premises owned or controlled by the Trust.

16. Fees

The Trust shall pay to Monitor such reasonable annual fee, if any, as may be determined by Monitor.

17. Representative membership

The Trust shall continue to take such reasonable steps (as may be required by Monitor, by such date or within such period as may be specified by Monitor), to secure that (taken as a whole) the actual membership of any public constituency and (if there is one) the patients' constituency is representative of those eligible for such membership.

18. Co-operation with other bodies

(1) The Trust shall co-operate with Primary Care Trusts, Strategic Health Authorities, Special Health Authorities, the Care Quality Commission, other NHS foundation trusts, NHS trusts and other health authorities and organisations in accordance with the Act and any future guidance to be published by Monitor.

(2) The Trust shall co-operate with the Care Quality Commission, the National Oversight Group for High Security Hospitals and such other bodies (as may be specified in any future guidance to be published by Monitor) which have a remit covering activities related to the provision of mental healthcare services.

(3) The Trust shall co-operate with local authorities in the exercise of its own functions and in the exercise by the local authorities of their respective functions.

19. Emergency planning

The Trust shall assist the relevant authorities with, and participate in, local and national emergency planning and provision.

20. Information technology

The Trust shall participate in the national programme for information technology, in accordance with any guidance issued by Monitor.

21. Audit committee

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

- (2) The Board of Directors shall satisfy itself that at least one member of the audit committee has recent and relevant financial experience.

22. Audit

- (1) The Audit Code for NHS Foundation Trusts (“the Audit Code”) contains the directions of Monitor under paragraph 24(5) of Schedule 7 to the Act with respect to the standards, procedures and techniques to be adopted by the auditor.
- (2) The Trust shall comply with the Audit Code.
- (3) The auditor shall comply with the Audit Code.

23. Public interest reporting

The Trust shall forward a report to Monitor within thirty days (or such shorter period as Monitor may specify) of the auditor issuing a public interest report in terms of Schedule 10 paragraph 3 of the Act. The report shall include details of the Trust’s response to the issues raised within the public interest report.

24. Notification

The Trust shall deal with Monitor in an open and co-operative manner and shall promptly notify Monitor of anything relating to the Trust of which Monitor would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under this authorisation or any financial or performance thresholds which Monitor may specify from time to time.

25. Information given to Parliament and to Members of Parliament

In addition to any statutory requirements, the Chairman, Chief Executive or any other person giving information to Parliament or to a Member of Parliament on behalf of a Trust shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.

26. Co-operation and Competition Panel

The Co-operation and Competition Panel (CCP) will advise Monitor on issues involving the Principles and Rules for Co-operation and Competition and NHS foundation trusts. In response to that advice, Monitor may issue directions to the Trust. The Trust shall comply with any such directions issued by Monitor

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

**CONSTITUTION OF
DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST**

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DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST CONSTITUTION

1. Name

The name of the foundation Trust is Derbyshire Healthcare NHS Foundation Trust (the "Trust").

2. Principal purpose

The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.

3. Powers

3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation.

3.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

3.3 Subject to the provisions of the Mental Health Act 2007, any of these powers may be delegated to a committee of Directors or to an Executive Director.

3.4 For the avoidance of doubt, the Trust shall, in performing its NHS functions (as defined in the Health Act 2009) have regard to the NHS Constitution.

4. Membership and constituencies

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

4.1 a Public Constituency; and

4.2 a Staff Constituency.

5. Application for Membership

5.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, save as provided for in paragraph 8.1

5.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 8.

6. Public Constituency

6.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member of the Trust.

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

6.3 The minimum number of Members in each area for a Public Constituency is specified in Annex 1.

6.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 8.

7. Staff Constituency

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

- 7.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 7.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this paragraph 7 are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.5 The minimum number of Members in each class of the Staff Constituency is 100 in the Nursing and Allied Professions Staff class, and 20 in each of the Medical and Dental Staff class and the Administration and Allied Support Staff class.
- 7.6 For the purposes of paragraph 7.1.2 and 7.2 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

8. Automatic Membership by default and application for Membership – staff

- 8.1 An individual who is:
 - 8.1.1 eligible to become a Member of the Staff Constituency and
 - 8.1.2 invited by the Trust to become a Member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,
 shall become a Member of the Trust as a Member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.
- 8.2 An individual who is:
 - 8.2.1 eligible to become a Member of the Staff Constituency by reason of paragraph 7.2, and
 - 8.2.2 has made an application to become a Member of the Staff Constituency,
 may become a Member of the Staff Constituency in accordance with this Constitution.
- 8.3 The process by which an individual may become a Member of the Staff Constituency by application, or by being invited to become a Member of the Staff Constituency shall be in accordance with the provisions of Annex 8.

9. Restriction on Membership

- 9.1 An individual, who is a Member of a Constituency, or of a class within a Constituency, may not while membership of that Constituency or class continues, be a Member of any other Constituency or class.
- 9.2 An individual who satisfies the criteria for Membership of the Staff Constituency may

not become or continue as a Member of any constituency other than the Staff Constituency.

- 9.3 An individual must be at least 16 years old to become a Member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 8.

10. Council of Governors – composition

- 10.1 The Trust shall have a Council of Governors, which shall comprise both Elected and Appointed Governors.
- 10.2 The composition of the Council of Governors is specified in Annex 3.
- 10.3 The Members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency.
- 10.4 The number of Governors to be elected by each constituency is specified in Annex 3.

11. Council of Governors – election of Governors

- 11.1 Subject to the transitional provisions contained at paragraph 2 of Annex 5 the Initial Election for the elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 11.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution. The Model Election Rules current as at the date of the Trust's authorisation are attached as Annex 4.
- 11.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 39 of the Constitution.
- 11.4 An election, if contested, shall be by secret ballot.

12. Council of Governors – tenure

- 12.1 Subject to the transitional provisions contained at paragraph 2 of Annex 5 in relation to the Initial Elected Governors, an Elected Governor may hold office for a period of up to 3 years.
- 12.2 An Elected Governor shall cease to hold office if he ceases to be a Member of the Constituency or class by which he was elected.
- 12.3 An Elected Governor shall be eligible for re-election at the end of his term, subject to the provisions of paragraph 1.2 of Annex 5 (Additional Provisions – Council of Governors).
- 12.4 An Appointed Governor may hold office for a period of up to 3 years and shall be eligible for re-appointment at the end of that term, subject to the provisions of paragraph 1.2 of Annex 5.
- 12.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 12.6 Further provisions relating to a Governor's tenure of office are set out in Annex 5.

13. Council of Governors – disqualification and removal

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

- 13.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 13.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 13.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 13.3 Further provisions as to the circumstances in which an individual may not become or continue or may be removed as a member of the Council of Governors are set out in Annex 5.

14. Council of Governors – meetings of Governors

- 14.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Council of Governors.
- 14.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting on the grounds more particularly provided for in Annex 5.

15. Council of Governors – standing orders

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

16. Council of Governors – conflicts of interest of Governors

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

17. Council of Governors – travel expenses

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

18. Council of Governors – further provisions

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

19. Board of Directors – composition

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

- 19.2 Subject to paragraph 19.8, the Board of Directors is to comprise:
- 19.2.1 a non-executive Chairman
 - 19.2.2 up to 6 other Non-Executive Directors (one of which may be nominated as the Senior Independent Director); and
 - 19.2.3 up to 6 Executive Directors.
- 19.3 One of the Executive Directors shall be the Chief Executive.
- 19.4 The Chief Executive shall be the Accounting Officer.
- 19.5 One of the Executive Directors shall be the Finance Director.
- 19.6 One of the Executive Directors shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 19.7 One of the Executive Directors shall be a registered nurse or a registered midwife.
- 19.8 The Board of Directors shall at all times be constituted so that at least half the Board, excluding the Chairman, shall comprise of Non-Executive Directors.

20. Board of Directors – qualification for appointment as a Non-Executive Director

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

- 20.1 he is a Member of the Public Constituency; and
- 20.2 he is not disqualified by virtue of paragraph 26 below.

21. Board of Directors – appointment and removal of Chairman and other Non-Executive Directors

- 21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.
- 21.2 The removal of the Chairman or any other Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 21.3 The initial Chairman and the initial Non-Executive Directors shall be appointed in accordance with paragraph 22 below.

22. Board of Directors – appointment of initial Chairman and initial other Non-Executive Directors

- 22.1 The Council of Governors shall appoint the Chairman of the Applicant NHS Trust as the initial Chairman of the Trust if he wishes to be appointed.
- 22.2 The power of the Council of Governors to appoint the other Non-Executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the non-executive directors of the Applicant NHS Trust (other than the Chairman) who wish to be appointed.
- 22.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial Chairman and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph.
- 22.4 An individual appointed as the initial Chairman or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the

unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the Applicant NHS Trust but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

23. Board of Directors – appointment of Deputy Chairman

23.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as the Deputy Chairman.

24. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors

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

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

24.3 The initial Chief Executive is to be appointed in accordance with paragraph 25 below.

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

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

25.1 The Non-Executive Directors shall appoint the chief officer of the Applicant NHS Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.

25.2 The appointment of the chief officer of the Applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

26. Board of Directors – disqualification

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

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

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

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

26.4 a person who falls within the further grounds for disqualification set out in Annex 8.

27. Board of Directors – standing orders

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

28. Board of Directors – conflicts of interest of directors

28.1 If a Director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered or is likely to be considered by the Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it.

28.2 The Standing Orders of the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest

from any discussion or consideration of the matter in respect of which an interest has been disclosed.

29. Board of Directors – remuneration and terms of office

- 29.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.
- 29.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances and the other terms and conditions of office of the Chief Executive and other Executive Directors.

30. Registers

- 30.1 The Trust shall have:
- 30.1.1 a register of Members showing, in respect of each Member, the Constituency to which he belongs and, where there are classes within it, the class to which he belongs;
 - 30.1.2 a register of members of the Council of Governors;
 - 30.1.3 a register of interests of Governors;
 - 30.1.4 a register of Directors; and
 - 30.1.5 a register of interests of the Directors.
- 30.2 The process of admission to and removal from the registers shall be as set out in Annex 8.

31. Registers – inspection and copies

- 31.1 The Trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 31.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Trust, if he so requests.
- 31.3 So far as the registers are required to be made available:
- 31.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 31.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 31.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

32. Documents available for public inspection

- 32.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 32.1.1 a copy of the current Constitution;
 - 32.1.2 a copy of the current Terms of Authorisation;
 - 32.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

32.1.4 a copy of the latest annual report;

32.1.5 a copy of the latest information as to its forward planning; and

32.1.6 a copy of any notice given under Section 52 of the 2006 Act.

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

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

33. Auditor

33.1 The Trust shall have an auditor.

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

34. Audit committee

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

35. Accounts

35.1 The Trust shall keep accounts in such form as the Independent Regulator may with the approval of HM Treasury direct.

35.2 The accounts are to be audited by the Trust's auditor.

35.3 The Trust shall prepare in respect of each Financial Year annual accounts in such form as the Independent Regulator may with the approval of the HM Treasury direct.

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

36. Annual report and forward plans

36.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.

36.2 The Trust shall give information as to its forward planning in respect of each financial year to the Independent Regulator.

36.3 The document containing the information with respect to forward planning referred to at paragraphs 32.1.5 and 36.2 above shall be prepared by the Directors.

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

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

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

37.1 the annual accounts;

37.2 any report of the auditor on them; and

37.3 the annual report.

38. Instruments

38.1 The Trust shall have a seal.

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

39. Amendment of the Constitution

Amendments by the Trust of its Constitution are to be made with the approval of the Independent Regulator. For the avoidance of doubt, any amendments to the annexes attached to this Constitution must also be approved by the Independent Regulator.

40. Interpretation and definitions

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

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

40.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and references to paragraph numbers are references to paragraphs of this constitution unless the context provides otherwise.

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

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

40.6 If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law then the provisions of this Constitution shall prevail unless the law requires otherwise.

40.7 All Annexes referred to in this Constitution form part of it.

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

40.9 In this Constitution:

“Accounting Officer”	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
“Applicant NHS Trust”	means the Derbyshire Mental Health Services NHS Trust;
“the 2006 Act”	means the National Health Service Act 2006;
“Annual Members’ Meeting”	means the annual meeting of all the Members;
“Appointed Governors”	means the PCT Governors, the Local Authority Governors and the Partnership Governors;
“Area of the Trust”	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
“Board of Directors”	means the Board of Directors of the Trust as constituted

	in accordance with this Constitution and referred to in paragraph 19 and “Board” shall be construed accordingly;
“Chairman”	means the Chairman of the Trust appointed in accordance with paragraph 21 or paragraph 22 of this Constitution;
“Chief Executive”	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with paragraphs 24 or 25 of this Constitution;
“Constituencies”	means the Public Constituencies and, the Staff Constituency;
“Constitution”	means this Constitution of Derbyshire Healthcare NHS Foundation Trust;
“Council of Governors”	means the Council of Governors of the Trust as constituted in accordance with this Constitution and which shall have the same meaning as the “Board of Governors” in the 2006 Act;
“Deputy Chairman”	means the Deputy Chairman of the Trust;
“Derbyshire Constabulary”	means the police force maintained for the County of Derbyshire and the non-metropolitan district of Derby pursuant to the Police Act 1996;
“Director”	means a Director on the Board of Directors;
“Elected Governors”	means the Public Governors and Staff Governors;
“Election Scheme”	means the election scheme and rules set out in Annex 4 and which are to be used in connection with the election of the Elected Governors;
“Executive Director”	means an Executive Director of the Trust;
“Finance Director”	means the person who from time to time is appointed by the Trust to discharge the usual functions of its chief finance officer;
“Financial Year”	means:- <ul style="list-style-type: none"> (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and (b) each successive period of twelve months beginning with 1st April;
“Governor”	means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;
“Independent Regulator”	means the regulator of NHS Foundation Trusts, as provided by Section 31 of the 2006 Act;
“Initial Elected Governors”	means those Elected Governors who are elected as

	Governors at the Initial Elections;
“Initial Elections”	means at the first elections held by the Trust pursuant to this Constitution which shall for the avoidance of doubt include any election held pursuant to those powers contained in Section 33(4) of the 2006 Act;
“Local Authorities”	means those local authorities specified in Annex 3 which are local authorities for an area which includes the whole or part of the Area of the Trust;
“Local Authority Governor”	means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 3;
“Member”	means a Member of the Trust as determined in accordance with paragraph 5 and paragraph 8 of this Constitution;
“Membership”	means membership of the Trust through being a Member of one of its Constituencies;
“Members’ Meetings”	means a meeting of the Members;
“Model Election Rules”	shall have the meaning given to them in paragraph 11.2 of this Constitution;
"NHS Constitution"	means: <ul style="list-style-type: none"> (a) the document entitled "The NHS Constitution" published by the Secretary of State on 21 January 2009; or (b) any revised version of that document published under sections 3 or 4 of the Health Act 2009;
“NHS Foundation Trust Code of Governance”	means the Code of Governance published by the Independent Regulator on the 10 March 2010 or such similar or further guidance as the Independent Regulator may publish from time to time;
"Nominated Lead Governor"	means the Governor nominated as the nominated lead Governor by the Council of Governors in accordance with Annex 5, Paragraph 10;
“Non-Executive Director”	means a Non-Executive Director of the Trust;
“Partnership Governor”	means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 3;
“Partnership Organisations”	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 3;
“PCT Governor”	means a member of the Council of Governors appointed in accordance with the provisions of this Constitution by the Primary Care Trust specified in Annex 3;
“Primary Care Trust”	means those Primary Care Trusts specified in Annex 3;

“Public Governor”	means a Member of the Council of Governors elected by the Members of a Public Constituency;
“Public Constituencies”	means a public constituency of the Trust as defined in Annex 1;
“Secretary”	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
"Senior Independent Director"	means a Non-Executive Director nominated to the role of Senior Independent Director in accordance with the provisions of this Constitution;
"Staff Classes"	means the classes of the Staff Constituency as specified in Annex 2 (The Staff Constituency);
“Staff Constituency”	means that part of the Trust’s Membership consisting of the staff of the Trust and other persons as more particularly provided for at paragraph 7 of this Constitution and which is divided into the staff classes as specified in Annex 2;
“Staff Governor”	means a member of the Council of Governors elected by a Staff Class;
“Terms of Authorisation”	means the authorisation issued to the Applicant Trust by the Independent Regulator under Section 35(1) of the 2006 Act;
“the Trust”	means Derbyshire Healthcare NHS Foundation Trust;
“University of Nottingham”	means the university of that name whose main campus is at University Park, Nottingham, NG7 2RD;
“Voluntary Organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit.

ANNEX 1
The Public Constituency

1	2	3	4
Name of the Public Constituency	Area of the Public Constituency (as defined by electoral wards or Council areas)	Minimum number of Members	Number of Governors to be elected
Derby City - East	Alvaston Boulton Chaddesden Chellaston Derwent Oakwood Sinfin Spondon	100	2
Derby City - West	Abbey/Allestree Arboretum Blagreaves Darley Littleover Mackworth Normanton Mickleover	100	2
Amber Valley - North	Alfreton Codnor and Waingrove Crich Heage and Ambergate Ironville and Riddings Langley Mill and Aldecar Ripley Ripley and Marehay Somercotes Swanwick Wingfield	50	1
Amber Valley - South	Belper Central Belper East Belper North Belper South Duffield	50	1

	Heanor and Loscoe Heanor West Kilburn Shiple Park South West Parishes		
Bolsover	Bolsover District Council	50	1
Chesterfield North	Barrow Hill and New Whittington Brimington North Brimington South Dunston Hollingwood and Indersal Lowgates and Woodthorpe Middlescroft and Poolsbrook Moor Old Whittington St Helens	50	1
Chesterfield South	Brockwell Hasland Holmesbrook Linacre Loundsley Green Rother St Leonards Walton West	50	1
Derbyshire Dales	Derbyshire Dales District Council	50	1
Erewash - North	Abbotsford Cotmanhay Hallam Fields Ilkeston Central Ilkeston North Kirk Hallam Little Eaton and Breadsall Little Hallam Old Park Stanley West Hallam and Dale Abbey	50	1

Erewash - South	Breaston Derby Road East Derby Road West Draycott Long Eaton Central Nottingham Road Ockbrook and Borrowash Sandiacre North Sandiacre South Sawley Wilsthorpe	50	1
High Peak	High Peak Borough Council	50	1
North East Derbyshire	North East Derbyshire District Council	10	1
South Derbyshire	South Derbyshire District Council	50	1
Surrounding Areas	Nottinghamshire County Council Leicestershire County Council Staffordshire County Council South Yorkshire District Council Cheshire County Council	25	1

ANNEX 2
The Staff Constituency

1	2	3	4
Classes within the Staff Constituency	Individuals eligible for Membership of that Staff Class	Minimum number of Members in each Staff Class	Numbers of Governors to be Elected for each Staff Class
Medical and Dental Staff Class	Those individuals defined in paragraph 1 below	20	1
Nursing and Allied Professions Staff Class	Those individuals defined in paragraph 2 below	100	2
Administration and Allied Support Staff	Those individuals defined in paragraph 3 below	50	1

1. Medical and Dental Staff Class

1.1 The Members of the Medical and Dental Staff Class are individuals who are Members of the Staff Constituency who:

1.1.1 are fully registered persons within the meaning of the consolidated Medical Act 1983 and the Dentists Act 1984 (as the case may be) and who are otherwise fully authorised and licensed to practice in England and Wales or who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or dentist;

1.1.2 who are employed by the Trust in that capacity at the end of their invitation or application under paragraph 8 of the Constitution to become a Member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

2. Nursing and Allied Professions Staff Class

2.1 The Members of the Nursing and Allied Professions Staff Class are individuals who:

2.1.1 are registered with the Nurses and Midwifery Council and who are otherwise fully authorised and licensed to practice in England and Wales or who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph having regard to the usual definitions applicable at that time for persons carrying and the profession of registered nurse; or

2.1.2 whose regulating body falls within the remit of the Council of the Register of Healthcare Professions established by Section 25 of the NHS Reform Healthcare Professions Act 2002; and

2.1.3 who are employed by the Trust in that capacity at the date of their invitation under paragraph 8 of the Constitution to become a member in

accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

3. Administration and Allied Support Staff

3.1 The Members of the Administration and Allied Support Staff Class are individuals who:

3.1.1 do not come within paragraphs 1 and 2 above and who are designated by the Trust from time to time as eligible to be a Member of this Staff Class and who are not eligible to be members of another Staff Class for the purpose of this paragraph; and

3.1.2 who are employed or designated by the Trust at the date of their invitation and application under paragraph 8 of the Constitution to become a Member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

4. Minimum Numbers and Numbers of Governors

4.1 The minimum number of Members in each Staff Class shall be as set out in Column 3 of Table 1 to this Annex and the number of Governors to be elected by each such Staff Class is given the corresponding entry in Column 4 of that Table.

5. Continuous Employment

5.1 For the purposes of paragraphs 7.1 and 7.2 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purpose of the Trust.

6. Exercise of Functions

6.1 For the purpose of paragraph 7.2 of the Constitution it shall be for the Trust in its absolute discretion to determine whether an individual exercises functions for the purposes of the Trust and whether that individual has done so continuously for a period of at least 12 months.

ANNEX 3

Composition of the Council of Governors

1. Introduction
 - 1.1 The Council of Governors shall comprise Governors who are:
 - 1.1.1 elected by the respective Constituencies in accordance with the provisions of this Constitution; and
 - 1.1.2 appointed in accordance with paragraph 2 below.
 - 1.2 The Council of Governors shall at all times be constituted so that more than half the Council of Governors shall consist of Governors who are elected by Members of the Trust other than those who are Members of the Staff Constituency.
2. Bodies entitled to appoint a member of the Council of Governors
 - 2.1 The following bodies in this paragraph 2 shall be entitled to appoint a Governor or Governors (as the case may be) to the Council of Governors as provided for in this paragraph 2.

Primary Care Trusts

 - 2.2 Derby City Primary Care Trust and Derbyshire County Primary Care Trust shall each be entitled to appoint one Governor in accordance with a process of appointment agreed by each of them with the Trust. The absence of any such agreed process of appointment shall not preclude the said Primary Care Trust from appointing its Governor provided the appointment is duly made in accordance with the Primary Care Trust's own internal processes.

Qualifying Local Authorities

 - 2.3 Derby City Council and Derbyshire County Council shall be entitled to appoint one Governor each in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said local authority from appointing its Governors.

Partnership Organisations

 - 2.4 The Trust shall nominate those organisations to be designated as Partnership Organisations for the purposes of this Constitution. The organisations so nominated as Partnership Organisations are:
 - 2.4.1 Southern Derbyshire Voluntary Sector Mental Health Forum;
 - 2.4.2 North Derbyshire Voluntary Action;
 - 2.4.3 University of Nottingham;
 - 2.4.4 The University of Derby; and
 - 2.4.5 Derbyshire Constabulary.
 - 2.5 Each of the above organisations shall be entitled to appoint one Governor each in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes.

Composition of the Council of Governors

Table 1

	Electing/Appointing Body	Number of Governors	Total
1.	Public Constituencies		
	1.1 Derby City – East	2	16
	1.2 Derby City – West	2	
	1.3 Amber Valley - North	1	
	1.4 Amber Valley - South	1	
	1.5 Bolsover	1	
	1.6 Chesterfield - North	1	
	1.7 Chesterfield - South	1	
	1.7 Derbyshire Dales	1	
	1.8 Erewash - North	1	
	1.9 Erewash - South	1	
	1.10 High Peak	1	
	1.11 North East Derbyshire	1	
	1.12 South Derbyshire	1	
	1.13 Surrounding Areas	1	
2.	Staff Constituency		
	2.1 Medical and Dental Staff Class	1	4
	2.2 Nursing and Allied Professions Staff Class	2	
	2.3 Administration and Allied Support Staff Class	1	
3.	Appointed Governors		
	3.1 Derby City Primary Care Trust	1	9
	3.2 Derbyshire County Primary Care Trust	1	
	3.3 Derby City Council	1	
	3.4 Derbyshire County Council	1	
	3.5 Southern Derbyshire Voluntary Sector Mental Health Forum	1	
	3.6 North Derbyshire Voluntary Action	1	
	3.7 Derbyshire Constabulary	1	
	3.8 The University of Nottingham	1	
	3.9 University of Derby	1	
	Total number of Governors		29

4. Further Provision

Further provisions relating to the composition of the Council of Governors are at Annex 5.

ANNEX 4
The Model Election Rules

Part 1 – Interpretation

- 1 Interpretation

Part 2 – Timetable for election

- 2 Timetable
3 Computation of time

Part 3 – Returning officer

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

Part 4 – Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

- 22 List of eligible voters
23 Notice of poll
24 Issue of voting documents
25 Ballot paper envelope and covering envelope

The poll

- 26 Eligibility to vote

- 27 Voting by persons who require assistance
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Procedure for receipt of envelopes

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

Part 6 – Counting the votes

- 36 Arrangements for counting of the votes
- 37 The count
- 38 Rejected ballot papers
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- 40 The quota
- 41 Transfer of votes
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- 43 Exclusion of candidates
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- 45 Order of election of candidates
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- 47 Declaration of result for contested elections
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Part 8 – Disposal of documents

- 49 Sealing up of documents relating to the poll
- 50 Delivery of documents
- 51 Forwarding of documents received after close of the poll
- 52 Retention and public inspection of documents
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- 54 Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55 Expenses incurred by candidates
- 56 Expenses incurred by other persons

57 Personal, travelling and administrative expenses

Publicity

58 Publicity about election by the corporation
 59 Information about candidates for inclusion with voting documents
 60 Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

61 Application to question an election

Part 12 - Miscellaneous

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

Part I - Interpretation

1. Interpretation

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

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

“election” means an election by a constituency to fill a vacancy among one or more posts on the Council of Governors;

“the regulator” means the Independent Regulator for NHS foundation trusts; and

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

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

Part 2— Timetable for election

2. Timetable

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

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

3. Computation of time

- (1) In computing any period of time for the purposes of the timetable -
- (a) a Saturday or Sunday;
 - (b) Christmas day, Good Friday, or a bank holiday, or
 - (c) a day appointed for public thanksgiving or mourning,

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

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

Part 3— Returning officer

4. Returning officer

- (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

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

6. Expenditure

The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election

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

- (a) the constituency for which the election is being held,
- (b) the number of members of the Council of Governors to be elected from that constituency,
- (c) the details of any nomination committee that has been established by the corporation,

- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer-
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

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

10. Candidate's particulars

- (1) The nomination paper must state the candidate's
 - (a) full name,
 - (b) contact address in full, and
 - (c) constituency, of which the candidate is a member.

11. Declaration of interests

The nomination paper must state:

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

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

12. Declaration of eligibility

The nomination paper must include a declaration made by the candidate:

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

13. Signature of candidate

The nomination paper must be signed and dated by the candidate, indicating that:

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

14. Decisions as to the validity of nomination —

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
 - (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -
 - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show:
 - (a) the name, contact address, and constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,

as given in their nomination paper.

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

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

16. Inspection of statement of nominated candidates and nomination papers

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- (2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then —
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5— Contested elections

19. Poll to be taken by ballot

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) Every ballot paper must specify:
- (a) the name of the corporation,
- (b) the constituency for which the election is being held,

- (c) the number of members of the Council of Governors to be elected from that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

- (1) In respect of an election for a Public or Service Users & Carers constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration:
- (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the Public or Service Users & Carers constituency, of the particulars of that member's qualification to vote as a member of the constituency for which the election is being held.
- (3) The declaration of identity is to include space for:
- (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- (1) The corporation is to provide the returning officer with a list of the members of the constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to

be sent.

23. Notice of poll

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

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

24. Issue of voting documents by returning officer

- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters:
 - (a) a ballot paper and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

- (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- (2) The covering envelope is to have:
 - (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- (3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer —

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

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance —

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

28. Spoilt ballot papers

- (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
 - (a) is satisfied as to the voter’s identity, and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) —
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:
 - (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original ballot paper, and
 - (c) has ensured that the declaration of identity if required has not been returned.

- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) :
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) :
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (Public and Service Users & Carers constituencies)

- (1) In respect of an election for a Public or Service Users & Carers constituency, a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration :
- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
 - (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency for which the election is being held.
- (3) The declaration of identity is to include space for:
- (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter’s signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents

- (1) Where the returning officer receives a:

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

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

- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to :
 - (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper

- (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to:
 - (a) put the declaration of identity if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to
 - (a) mark the ballot paper “disqualified”,
 - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
 - (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (Public and Service Users & Carers constituencies)

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to —

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

35. Sealing of packets

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

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

Part 6 - Counting the votes

36. [Not Used]

37. Arrangements for counting of the votes

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

38. **The count** — (1) The returning officer is to —

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

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

39. Rejected ballot papers —

(1) Any ballot paper —

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

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

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

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

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

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

- (4) The returning officer is to —
 - (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
 - (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- (5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings —
 - (a) does not bear proper features that have been incorporated into the ballot paper,
 - (b) voting for more candidates than the voter is entitled to,
 - (c) writing or mark by which voter could be identified, and
 - (d) unmarked or rejected because of uncertainty,

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

40. [Not used]

41. [Not used]

42. [Not used]

43. [Not used]

44. [Not used]

45. [Not used]

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

Part 7— Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections — (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to —

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected—

- (i) where the election is held under a proposed constitution pursuant to powers conferred on the Applicant Trust by section 33(4) Part 2, Chapter 5 of the 2006 Act, to the chairman of the NHS Trust, or
- (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make:-

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

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

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

Part 8— Disposal of documents

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

- (a) the counted ballot papers,
 - (b) the ballot papers endorsed with “rejected in part”,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of —
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoilt ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description
- (a) its contents,
 - (b) the date of the publication of notice of the election,

- (c) the name of the corporation to which the election relates, and
- (d) the constituency to which the election relates.

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

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

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

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

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

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing —

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

by any person without the consent of the Regulator.

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

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

- (a) persons,
- (b) time,

- (c) place and mode of inspection,
- (d) production or opening,

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

- (4) On an application to inspect any of the documents listed in paragraph (1)
 - (a) in giving its consent, the regulator, and
 - (b) and making the documents available for inspection, the corporation,

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

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

Part 9— Death of a candidate during a contested election

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

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

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

- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to :
 - (a) count and record the number of ballot papers that have been received, and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of :
 - (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency to which the election relates.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to

paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

Part 10— Election expenses and publicity

Election expenses

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

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

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

57. Election expenses incurred by other persons — (1) No person may:

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

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation — (1) The corporation may :

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

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

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

(3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific

candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59. Information about candidates for inclusion with voting documents - (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

- (2) The information must consist of
- (a) a statement submitted by the candidate of no more than 250 words, and
 - (b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

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

Part II — Questioning elections and the consequence of irregularities

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

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

(3) An application may only be made to the Regulator by:

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the Regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency including all the candidates for the election to which the application relates.

c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12— Miscellaneous

62. Secrecy — (1) The following persons:

- (a) the returning officer,

(b) the returning officer's staff,

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

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

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

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

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

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

65. Delay in postal service through industrial action or unforeseen event — If industrial action, or some other unforeseen event, results in a delay in —

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

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

ANNEX 5**Additional Provisions - Council of Governors****1. Council of Governors: Terms of Office**

Subject to those transitional provisions contained in paragraph 2 below in relation to the Initial Elected Governors, a Governor shall be:

- 1.1 elected or appointed for a term of three years;
- 1.2 shall be eligible for re-election or re-appointment at the end of that term but may not serve as a Governor for more than a total of 9 years;
- 1.3 shall cease to hold office if:
 - 1.3.1 he ceases to be a member of a Trust Constituency or, in the case of an Appointed Governor, if the body which appointed him withdraws its appointment at any time;
 - 1.3.2 his term of office is terminated in accordance with paragraph 3 below and/or he is disqualified from or is otherwise ineligible to hold office as a Governor; or
 - 1.3.3 he resigns by notice in writing to the Trust.

2. Council of Governors: Transitional Provisions

- 2.1 Notwithstanding the provisions of paragraph 1 above and of paragraph 12.1 of the Constitution, the Initial Elected Governors shall hold office for those terms set out in Table 1 below.
- 2.2 Where a Constituency or class of a Constituency is entitled to elect more than one Governor at the Initial Elections, the candidate(s) who secures the highest number of votes shall serve for the longest period and the candidate(s) who secures the lowest number of votes shall serve for the shortest period.

Table 1

	Constituency	Number of Governors who shall serve for 36 months	Number of Governors who shall serve for 24 months
	Public Constituency		
1	Public Governors Derby City - East	1	1
2	Public Governors Derby City - West	1	1
3	Public Governor Amber Valley – North	1	0
4	Public Governor Amber Valley – South	1	0

5	Public Governor Bolsover	1	0
6	Public Governor Chesterfield - North	1	0
7	Public Governor Chesterfield - South	1	0
8	Public Governor Derbyshire Dales	1	0
9	Public Governor Erewash North	1	0
10	Public Governor Erewash South	1	0
11	High Peak	1	0
12	North East Derbyshire	1	0
13	South Derbyshire	1	0
14	Surrounding Areas	0	1
Staff Constituency			
15	Medical and Dental Staff Class	1	0
16	Nursing and Allied Professions Staff Class	1	1
17	Administration and Allied Support Staff	1	0

3. Council of Governors: Removal and Disqualification

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

- 3.1.1 he ceases to be eligible to be a Member, save in the case of Appointed Governors;
- 3.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him;
- 3.1.3 any of the grounds contained in paragraph 13 of the Constitution apply to him;
- 3.1.4 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
- 3.1.5 he is a person whose term of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;

- 3.1.6 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list;
 - 3.1.7 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act;
 - 3.1.8 the Independent Regulator has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or the Independent Regulator has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
 - 3.1.9 he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff and patients;
 - 3.1.10 his term of office is terminated pursuant to paragraph 4 below;
 - 3.1.11 the relevant organisation which he represents ceases to exist;
 - 3.1.12 he is a Director of the Trust or a governor or director of another NHS foundation trust;
 - 3.1.13 he is a vexatious or persistent litigant or complainant with regard to the Trust's affairs.
- 3.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Trust in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered him disqualified.
- 3.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable.
- 3.4 Upon the giving of notice under paragraphs 3.2 and 3.3 above, that person's tenure of office as a Governor shall thereupon be terminated and he shall cease to be a Council Governor and his name shall be removed from the Register of Governors.

4. Council of Governors: Termination of Tenure

- 4.1 A Governor's term of office shall be terminated:
- 4.1.1 by the Governor giving notice in writing to the Secretary of his resignation from office at any time during that term of office;
 - 4.1.2 by the Trust if any grounds exist under paragraph 3 above;
 - 4.1.3 by the Council of Governors if he has failed to attend three successive meetings of the Council of Governors unless the Council of Governors is satisfied;
 - (a) the absence was due to reasonable cause; and
 - (b) that the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.
 - 4.1.4 If the Council of Governors resolves to terminate his term of office for reasonable cause on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose that his continuing as a Governor would or would be likely to:

- (a) prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
 - (c) adversely affect public confidence in the goods and services provided by the Trust; or
 - (d) otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or
 - (e) it would not be in the best interests of the Trust for that person to continue in office as a Governor e.g.:
 - (i) he has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him to undertake in his capacity as a Governor;
 - (ii) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust; or
 - (iii) he has committed a material breach of any code of conduct applicable to Governors of the Trust.
- 4.2 Upon a Governor resigning under paragraph 4.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and his name shall be forthwith removed from the Register of Governors.
- 4.3 Any decision of the Council of Governors' to terminate a Governor's tenure of office may be referred by the Governor to the dispute resolution procedure referred to in Annex 8, Paragraph 5.4 within 14 days of the date upon which notice in writing of the Council of Governor's decision is given to the Governor.
- 4.4 The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating his tenure of office.
- 4.5 A Governor who resigns or whose tenure of office is terminated under this paragraph 4 shall not be eligible to stand for re-election for a period of 3 years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later.

5. Council of Governors: Vacancies

- 5.1 Where a Governor's term of office terminates for whatever reason then:
- 5.1.1 in the case of an Appointed Governor, the Trust shall invite the relevant appointing body to appoint a new Governor as soon as practicable; and
 - 5.1.2 in the case of an Elected Governor, elections for a new Governor shall take place as soon as practicable subject to the provisions of paragraphs 5.2 and 5.3 below.
- 5.2 Where an Elected Governor ceases for whatever reason to hold office within twelve months of his election:
- 5.2.1 the Trust shall offer the candidate who was ranked next highest in the last

election for the Constituency (or class of Consistency as the case may be) which the vacancy has arisen the opportunity assume the vacant office of Governor for the unexpired balance of the former Governor's term of office;

- 5.2.2 if that candidate does not accept that invitation in a timely manner it shall be offered to that candidate who was next highest ranked in the last said election until the vacancy is filled; but if no other candidate stood for election or there are no remaining candidates who stood for election to that office or no candidate accepts the Trust's invitation in accordance with the above provisions within such time as the Trust may in its absolute discretion decide, the Trust shall hold an election for the vacancy as soon as reasonably practicable thereafter.
- 5.3 Subject to the provisions of paragraph 5.5, where an Elected Governor ceases for whatever reason to hold office within the last twelve months of his term of office, the office shall remain vacant until the next scheduled election takes place.
- 5.4 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the purposes of paragraph 5.2 and the Returning Officer shall conduct and oversee the conducting of the process set out in paragraph 5.2 of this Annex 5.
- 5.5 Notwithstanding the above provisions of this paragraph 5, where the termination of a Governor's term of office causes the total number of Public Governors to be equal to or fewer than the other Governors of the Trust then an election for that vacant office shall be held as soon as reasonably practicable.
- 5.6 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

6. Council of Governors: Role

- 6.1 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance and the Independent Regulator's guidance "Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors".
- 6.2 Subject to the requirement specified in paragraph 6.1 above, each Governor shall exercise his own skill and judgement in his conduct of the Trust's affairs and shall in his stewardship of the Trust's affairs bring as appropriate the perspective of the Constituency or organisation by which he was elected or appointed, as the case may be.
- 6.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Council of Governors shall;
- 6.3.1 assist the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set; and
- 6.3.2 monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with its Terms of Authorisation and the terms of this Constitution.

7. Council of Governors: Meetings

- 7.1 The Council of Governors shall hold not less than four general meetings each Financial Year.
- 7.2 All such meetings shall be open to the public unless the Council of Governors

resolves that the public be excluded from the meeting, whether for the whole or part of the proceedings on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings.

- 7.3 Not Used.
- 7.4 The Council of Governors may request the attendance of some or all of the members of the Board of Directors at its meetings and the Board of Directors may attend and may give such reports and information to the Council of Governors as the Board of Directors considers appropriate and subject always to the other provisions of this Constitution.
- 7.5 A meeting of the Council of Governors shall be quorate and quoracy shall require that there shall be present at the meeting not less than 20% of all Council of Governors and that those present include at least one Staff Governor and two Public Governors.
- 7.6 No business shall be conducted at a meeting which is not quorate.
- 7.7 If a meeting is not quorate within 15 minutes of the time scheduled for its commencement it shall automatically stand adjourned for a period of 7 days and the Chairman shall give or shall procure the giving of notice to all Governors of the date, time and place of that adjourned meeting.
- 7.8 The Council of Governor's Standing Orders as set out in Annex 6 of the Constitution provide for further details of the practice and procedure at Council of Governor's meetings (including general meetings).

8. Council of Governors: Declarations

- 8.1 A Member of a Public Constituency standing for election as Governor must make a declaration for the purposes of Section 60(2) of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a Member and that he is not prevented from being a Member of the Council of Governors by virtue of any provisions of this Constitution. It is an offence to knowingly or recklessly make a statement or declaration which is false in material particular.
- 8.2 The specified form of declaration shall be set out on the Nomination Form referred to in the Model Election Rules at Annex 4 and shall state as follows:

"I, the above named candidate, consent to my nomination and agree to stand for election to the Council of Governors in the Constituency indicated in Section One of this form. I also declare that I am a member in that Constituency.

I, the above named candidate, hereby declare that I am not:

- (a) *a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;*
- (b) *a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;*
- (c) *a person who within the preceding 5 years has been convicted in the British Islands of any offence with a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on him.*

I confirm that to the best of my knowledge, the information provided on (or in connection with) this form is accurate".

- 8.3 A Governor elected to the Council of Governors by the Public Constituency or Staff

Constituency may not for the purposes of Section 60(3) of the 2006 Act vote at a meeting of the Council of Governors unless within the period since his election, he has made a declaration in the form specified in paragraph 8.4 below stating which Constituency he is a Member of and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or by virtue of any provisions of this constitution.

- 8.4 The specified form of declaration referred to in paragraph 8.3 above shall state as follows:

"I declare that I am a Member of the Public Constituency or Staff Constituency and am eligible to vote at a meeting of the Council of Governors, and that I am not debarred from voting by any of the provisions in paragraph 8 of Schedule 7 to the 2006 Act or by virtue of any provisions of this Constitution."

9. Council of Governors: Committees and Sub-Committees

- 9.1 A committee, chaired by the Chairman, shall be established to assist the Council of Governors with the nomination and selection of the Non-Executive Directors (the "Nomination Committee for Non-Executive Directors"). In the case of the nomination and selection of the Chairman the Nominated Committee for Non-Executive Director shall be chaired by the Deputy Chairman.
- 9.2 The Nominations Committee for Non-Executive Directors will comprise:
- 9.2.1 the Chairman (or, if the Chairman is not available, the Deputy Chairman or one of the other Non-Executive Directors who is not standing for appointment);
- 9.2.2 *four* Elected Governors including Public Governors and Staff Governors and *two* Appointed Governors;
- 9.2.3 no two Governors will be appointed from the same Public Constituency or Staff Class of the Staff Constituency,
- 9.2.4 not more than one may be a PCT Governor, not more than one may be a Local Authority Governor and not more than one may be a Governor appointed by the voluntary sector.
- 9.3 A committee may be established to assist the Council of Governors with the remuneration of the Chairman and Non-Executive Directors (the "Remuneration Committee for Non-Executive Directors").
- 9.4 The functions of the Nominations Committee for Non-Executive Directors shall be as follows:
- 9.4.1 to determine the criteria and process for the selection of candidates for office as Chair or other Non-Executive Director of the Trust having first consulted with the Board of Directors and Governors as to those matters and having regard to such views as may be expressed by the Board of Directors and Council of Governors;
- 9.4.2 to assess and select for interview such candidates as are considered appropriate and in doing so the Nominations Committee for Non-Executive Directors shall be at liberty to seek advice and assistance from persons other than members of the Nominations Committee for Non-Executive Directors or of the Council of Governors;
- 9.4.3 to make recommendation to the Council of Governors as to potential candidates for appointment as Chair or other Non-Executive Director, as the case may be.

- 9.6 The Council of Governors shall resolve in general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors and of the Nominations Committee for Non-Executive Directors as to the suitability of the available candidates and the remuneration and allowances and other terms and conditions of office.

10. Nominated Lead Governor

- 10.1 The Council of Governors shall nominate one of its Governors as the nominated lead Governor (the "**Nominated Lead Governor**").
- 10.2 The Nominated Lead Governor shall provide his/her contact details to the Independent Regulator and continue to update the Independent Regulator with their contact details as and when they change.
- 10.3 The role of the Nominated Lead Governor is to facilitate direct communication between the Independent Regulator and the Council of Governors in the limited circumstances where it may not be appropriate to communicate through the normal channels.
- 10.4 The Nominated Lead Governor shall take steps to understand the Independent Regulator's role, the available guidance and the basis on which the Independent Regulator may take regulatory action.
- 10.4 In the event that an individual Governor wishes to make contact with the Independent Regulator, this contact will be through the Nominated Lead Governor.

ANNEX 6

Standing Orders for the Practice and Procedure of the Council of Governors

**DERBYSHIRE HEALTHCARE NHS FOUNDATION
TRUST**

Standing Orders

Council of Governors

FOREWORD

This document provides a regulatory and business framework for the conduct of the Council of Governors.

INTRODUCTION

Statutory Framework

Derbyshire Healthcare NHS Foundation Trust (“the Trust”) is a Public Benefit Corporation that was established by the granting of Terms of Authorisation by the Independent Regulator.

The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 and in the Trust’s Terms of Authorisation issued by the Independent Regulator.

As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

NHS Framework

Paragraph 15 of the Constitution, requires the Council of Governors to adopt its own Standing Orders for its practice and procedure.

1. INTERPRETATION

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

2. THE COUNCIL OF GOVERNORS

- 2.1 Roles and Responsibilities of Governors:
- 2.1.1 Appointment and removal of the Chair and Non-Executive Directors (Constitution Paragraph 21)
- 2.1.2 Approve the appointment (but not the removal) of the Chief Executive (Constitution Paragraphs 24 and 25)
- 2.1.3 Appoint and remove the Auditor (Constitution Paragraph 33)
- 2.1.4 Receive the Annual Report & Accounts (Constitution Paragraph 37)
- 2.1.5 Ensure that the Trust operates in accordance with the Terms of Authorisation and will also act in a Trustee role for the welfare of the organisation as a vehicle for influencing change and developments.
- 2.1.6 Oversee and advise the Board of Directors regarding future Trust plans and priorities.
- 2.1.7 To monitor the performance of the Trust against the strategic direction and the targets with a view to satisfying itself that the Board of Directors is fulfilling its responsibilities in this regard. This will be achieved by regular briefings on the performance of the Trust and at its meetings, being able to consider and comment on that performance.
- 2.1.8 Ensure continued success of the organisation through overseeing of effective management, partnership working and maintenance of NHS values and principles.
- 2.1.9 Oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in ensuring that the Council of Governors reflects all the interests of the membership community.
- 2.1.10 To share local responsibility for the success of the Trust, in particular by building and sustaining a wide consensus to the vision for the Trust and by members representing the hospital to their respective communities and organisations and *vice versa*.
- 2.1.11 Instigate or be involved in review of a specific issue, or be involved in further development of a particular strategy through specific working groups.
- 2.2 **Composition of the Council of Governors** – The composition of the Council of Governors shall be as set out in Annex 3 of the Constitution.
- 2.3 **Appointment of the Chairman and Non-Executive Directors** – The Chairman and Non-Executive Directors are appointed by the Council of Governors in accordance with Paragraph 21 of the Constitution.
- 2.4 **Terms of Office of the Chairman and Non-Executive Directors** – The provisions governing the period of tenure of office of the Chairman and the Non-Executive Directors are contained in Paragraph 29 of the Constitution.
- 2.5 **Deputy-Chairman** - The Deputy-Chairman may preside at meetings of the Council of

Governors in the following circumstances:

- 2.5.1 When there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chairman is not present.
- 2.5.2 When the remuneration, allowance and other terms and conditions of the Chairman are being considered.
- 2.5.3 When the appointment of the Chairman is being considered, should the current Chairman be a candidate for re-appointment.
- 2.5.4 On occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council of Governors.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 Calling Meetings

- 3.1.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Foundation Trust's website, which will also be provided at least fourteen days before the meeting.
- 3.1.2 The Secretary shall ensure that within the meeting cycle of the Council of Governors, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

3.2 **Admission of the Public** – The provisions for the admission of the public to meetings of the Council of Governors are detailed at Paragraph 14 and Annex 5 of the Constitution.

3.3 **Chairman of Meetings** – The Chairman of the Trust, or in his absence, the Deputy Chairman is to preside at meetings of the Council of Governors. If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy-Chairman shall preside.

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

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

3.6 **Notices of Motion** – A Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman or Secretary, who shall insert in the agenda for the meeting all notices so received subject to the Notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without Notice on any business mentioned on the agenda in accordance with Standing Order 3.5, subject to the Chairman's discretion.

3.7 **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

3.8 **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within

the preceding six calendar months shall be in writing, be in accordance with Standing Order 3.6 and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council 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, however the Chairman may do so if he considers it appropriate.

- 3.9 **Motions** – The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.10 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 3.10.1 An amendment to the motion.
- 3.10.2 The adjournment of the discussion or the meeting.
- 3.10.3 That the meeting proceed to the next business.
- 3.10.4 That the motion be now put.
- No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.
- 3.11 **Chairman's Ruling** – Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).
- 3.12 **Voting** – Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.
- 3.13 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 3.14 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 3.15 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.16 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.17 **Minutes** – The Minutes of the proceedings of a matter shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.18 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.19 Minutes of meetings will be taken and circulated in accordance with Governors'

wishes.

- 3.20 **Suspension of Standing Orders** – Except where this would contravene any statutory provision, the Terms of Authorisation or any provision of the Constitution, any one or more of the Standing Orders may be suspended at any meeting provided that at least two thirds – of the Council of Governors are present, including two Public Governors and one Staff Governor, and that a majority of those present vote in favour of suspension.
- 3.21 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.22 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 3.23 No formal business may be transacted while Standing Orders are suspended.
- 3.24 **Variation and Amendment of Standing Orders** – these Standing Orders shall be amended only if:
- 3.24.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
- 3.24.2 unless presented by the Chairman or the Chief Executive, a notice of motion under Standing Order 3.6 has been given; and
- 3.24.3 at least two thirds of the Governors are present, including one Staff Governor and two Public Governors; and
- 3.24.4 no fewer than half the Governors vote in favour of amendment; and
- 3.24.5 the variation proposed is approved by the Independent Regulator.
- 3.25 **Record of Attendance** – the names of the Governors present at the meeting shall be recorded in the minutes.
- 3.26 **Quorum** – no business shall be transacted at a meeting of the Council of Governors unless at least 20% of the Council of Governors are present and that those present include at least one Staff Governor and two Public Governors.
- 3.27 A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.28 Subject to Standing Orders in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chairman, to speak to any item under consideration.

4. COMMITTEES

- 4.1 Except as required by paragraph 9.2 of Annex 5, the Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a Committee.

5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 5.1 **Declaration of Interests** – in accordance with Paragraph 16 of the Constitution, Governors are required to declare formally any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 5.2 A Governor must declare to the Secretary:
- 5.2.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, and
- 5.2.2 any interests which are relevant and material to the business of the Trust.
- 5.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Standing Orders and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within three working days.
- 5.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter. The provisions of this Paragraph are subject to Paragraph 5.9.
- 5.5 "relevant and material" interests may include but may not be limited to the following:
- 5.5.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- 5.5.2 ownership or part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 5.5.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- 5.5.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
- 5.5.5 any connection with a voluntary or other organisation contracting for or commissioning NHS services;
- 5.5.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
- 5.5.7 research funding/grants that may be received by an individual or their department;
- 5.5.8 interests in pooled funds that are under separate management.
- 5.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 5.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter,

if:

- 5.7.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 5.7.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 5.8 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 5.8.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 5.8.2 of an interest in any company body or person with which he is connected as mentioned in paragraphs 5.2, 5.5 and 5.7 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 5.9 Where a Governor:
- 5.9.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 5.9.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - 5.9.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- 5.10 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.
 - 5.11 If Governors have any doubt about the relevance of an interest, this should be discussed with the Secretary.
 - 5.12 **Register of Interests** - the Secretary shall record any declarations of interest made in a Register of Interests kept by him in accordance with paragraph 30 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
 - 5.13 The Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a member of the Trust then a reasonable charge may be made for doing so.

6. STANDARDS OF BUSINESS CONDUCT

- 6.1 **Policy** – in relation to their conduct as a Governor of the Trust, each Governor must comply with the principles outlined in HSG(93)5, "Standards of Business Conduct for

NHS staff" as amended. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.

6.2 **Interest of Governors in Contracts** – if it comes to the knowledge of a Governor that a contract in which he/she has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Secretary of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

6.3 A Governor shall not solicit for any person any appointment in the Trust.

7. REMUNERATION

7.1 Governors are not to receive remuneration.

8. PAYMENT OF EXPENSES TO GOVERNORS

8.1 The Trust will pay travelling expenses to Governors at the prevalent NHS Public Transport rate for attendance at General Meetings of the Governors, or any other business authorised by the Secretary as being under the auspices of the Council of Governors.

8.2 Expenses will be authorised and reimbursed through the Secretary's office on receipt of a completed and signed expenses form provided by the Secretary.

8.3 A summary of expenses paid to Governors will be published in the Annual Report.

9. RESOLUTION OF DISPUTES

9.1 **Dispute Resolution between Board of Directors and Council of Governors**

9.1.1 The Council of Governors and the Board of Directors shall be committed to developing and maintaining 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.

9.1.2 If the Chairman cannot achieve resolution of a disagreement through informal efforts 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 joint meeting ("Resolution Meeting") of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than twenty clear days following the date of the request. The meeting must comprise two thirds of the membership of the Council of Governors and two thirds of the membership of the Board of Directors. The meeting will be held in private. 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 reasonable effort must be made to reach agreement.
- (b) If a Resolution Meeting of the members of the Council 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 Council of Governors considers that implementation of the decision will result in the trust failing to comply

with the Terms of Authorisation; the Council of Governors will notify the Independent Regulator of the specific issue of non-compliance.

- 9.1.3 The right to call a Resolution Meeting rests with following, in the sequence of escalation shown:
- (a) the Chairman;
 - (b) the Chief Executive;
 - (c) two thirds of the members of the Council of Governors;
 - (d) two thirds of the members of the Board of Directors.

10. MISCELLANEOUS

- 10.1 **Review of Standing Orders** – These Standing Orders shall be reviewed annually by the Council of Governors.
- 10.2 **Deputy-Chairman** – In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors, which arises the Deputy-Chairman may exercise such power as the Chairman would have in those circumstances.
- 10.3 **Notice** – Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.
- 10.4 **Confidentiality** – A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

ANNEX 7

Standing Orders for the Practice and Procedure of The Board of Directors

Derbyshire Healthcare NHS Foundation Trust

Standing Orders Board of Directors

INTRODUCTION

Who should read these Standing Orders?

You should read these Standing Orders and be aware of their relevance to you as you discharge your responsibilities if you:-

- Are a Director of the Trust
- Attend Board meetings
- Are a member of a committee or sub-committee established by the Board, or attend its meetings
- Are a senior officer of the Trust
- Are involved in letting contracts on behalf of the Trust
- Are responsible for any aspect of the procurement of goods and services on behalf of the Trust
- Have a pecuniary interest in a contract that the Trust is entering into
- Are required to sign any legal document on behalf of the Trust

Statutory Framework

The Derbyshire Healthcare NHS Foundation Trust is a public benefit corporation which was established under the 2006 Act on [insert date], subject to its Constitution and Terms of Authorisation.

The principal headquarters of the Trust is at Bramble House Kingsway Hospital, Kingsway Derby DE22 3LZ.

NHS Foundation Trusts are governed by a regulatory framework that confers the functions of the Trust and comprises the 2006 Act, the Constitution and the Terms of Authorisation. The powers of the Trust are set out in the 2006 Act subject to any restrictions in the Terms of Authorisation.

The Trust will be bound by such other statute and legal provisions or guidance which governs the conduct of its affairs.

As a public benefit corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients. The Trust also has statutory powers to fund projects jointly planned with local authorities, voluntary organisations and other bodies.

In accordance with paragraph 27 of the Constitution, the Standing Orders of the Board of Directors is to be set out in this Annex 7. The Trust adopts Standing Orders for the regulation of proceedings and business.

NHS Framework

In addition to the statutory requirements the Secretary of State (through the Department of Health) issues further requirements and guidance. These are normally issued under cover of a circulation or letter. Many of these are contained within the Trust's Model Corporate Governance documents. Codes of Conduct and Accountability make various requirements concerning possible conflicts of interests of Directors. The Codes (and the Constitution) also require the establishment of Audit and Remuneration Committees with terms of reference formally agreed by the Trust Board.

Delegation of Powers

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

Delegated Powers are covered in a separate section (Reservation and Delegation of Powers).

Where officers are designated in these Standing Orders, they may designate their responsibility through approved schemes of delegation.

1. INTERPRETATION AND DEFINITIONS

- 1.1 At any meeting, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive or Secretary), except where this would contravene any statutory provision or direction made by the Secretary of State (applicable to NHS Foundation Trusts) or such authorisation as may be given by the Independent Regulator.
- 1.2 All references in these Standing Orders to the masculine gender shall be read equally applicable to the feminine gender.
- 1.3 For convenience and unless the context otherwise requires the terms and expressions contained within paragraph 40 of the Constitution relating to Interpretation are incorporated and are deemed to have been repeated here verbatim for the purposes of interpreting words contained in this Annex 6 and in addition:

"COMMITTEE" means a committee or sub-committee appointed by the Trust

"COMMITTEE MEMBERS" shall be persons formally appointed by the Trust to sit on or to chair specific committees.

"CONTRACTING AND PROCURING" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

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

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

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

2. THE TRUST

2.1 Composition of the Trust - In accordance with the Constitution, the composition of the Board of the Trust shall comprise :

- a non-executive Chairman
- up to 6 other Non-Executive Directors (one of which may be nominated as the Senior Independent Director); and
- up to 6 Executive Directors

The Board of Directors shall at all times be constituted so that at least half the Board, excluding the Chairman, shall comprise of Non-Executive Directors.

2.1A The Chairman may appoint one of the Independent Non-Executive Directors as the Senior Independent Director in consultation with the Governors and the other Non-Executive Directors. The Chairman shall normally, but not necessarily appoint the Deputy Chairman to this position.

2.2 Appointment of the Chairman and Directors - The Chairman and Non-Executive Directors are appointed (and removed) by the Council of Governors. The Chief Executive will be appointed or removed by the Non-Executive Directors and the appointment (but not the removal) will be subject to approval by the Council of Governors. The Trust shall appoint an Appointments Committee and/or other nominated persons whose members shall be the Chairman, Non-Executive Directors and the Chief Executive whose function will be to appoint the other Executive Directors of the Trust.

2.3 Terms of Office of the Chairman and Directors – The provisions governing the period of tenure of office of the Chairman and Directors and for the termination or suspension of office of the Chairman and Directors are set out in the Constitution and these Standing Orders. Non-Executive Directors, including the Chairman, shall be appointed by the Council of Governors for specified terms at intervals of no more than three (3) years. Any term beyond six years (e.g. two three year terms) shall be subject to particularly rigorous review and shall take into account the need for progressive refreshing of the Board. Non-Executive Directors may in exceptional circumstances serve longer than six (6) years but in such circumstances shall be subject to annual re-appointment.

2.4 Appointment of Deputy-Chairman - For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council of Governors may appoint a Non-Executive Director to be Deputy-Chairman for such a period, not exceeding the remainder of his term as Non-Executive Director of the Trust, as they may specify on appointing him.

2.5 Any Non-Executive Director so elected may at any time resign from the office of Deputy-Chairman by giving notice in writing to the Chairman and the Directors of the Trust may thereupon appoint another Non-Executive Director as Deputy-Chairman in accordance with paragraph 2.4.

2.6 Powers of Deputy-Chairman - Where the Chairman of the Trust has ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness, or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties.

2.7 Joint Directors

- (1) Where more than one person is appointed jointly to a post of Director those persons shall count for the purpose of Standing Order 2.1 as one person.
- (2) Where the office of a Director of the Board is shared jointly by more than one person:

- (a) either or both of those persons may attend or take part in meetings of the Board;
- (b) if both are present at a meeting they should cast one vote if they agree;
- (c) in the case of disagreements no vote should be cast;
- (d) the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 3.26 Quorum.

2.8 Not Used

2.9 Role of Directors – The Board will function as a corporate decision-making body within which all Directors will be equal. Their role as members of the Board will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions. In exercising these functions the Board will consider guidance from the Independent Regulator's "the NHS Foundation Trust Code of Governance" as amended from time to time.

- (1) **Executive Directors** Executive Directors shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.
- (2) **Chief Executive** The Chief Executive shall be responsible for the overall performance of the Trust. He is the **Accounting Officer** for the Trust and shall be responsible for ensuring the discharge of obligations under financial directions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum for Trust Chief Executives.
- (3) **Executive Director of Finance** The Executive Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant financial directions.
- (4) **Non-Executive Directors** The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of, or when chairing, a committee of the Trust which has delegated powers.
- (5) **Chairman** The Chairman shall be responsible for the operation of the Board and chair all Board meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of appointment and with these Standing Orders. The Chairman shall liaise with the Council of Governors over the appointment of Non-Executive Directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance. The Chairman shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

2.11 Corporate Role of the Board

- 1) All business shall be conducted in the name of the Trust
- 2) All funds received in the trust shall be held in the name of the Derbyshire County Primary Care Trust acting as corporate trustee on behalf of the Trust.
- 3) The powers of the Trust shall be exercised by the Board meeting in private session except as otherwise provided in standing order (3.1)

2.12 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "the Schedule of Powers reserved to the Board".

2.13 Lead Roles for Directors

The Chairman will ensure that the designation of Lead roles or appointments of Board members as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Director with responsibilities for Infection Control or Child Protection Services etc).

3. MEETINGS OF THE TRUST

- 3.1 **Admission of the Public and the Press** – The meetings of the Board of Directors shall be open to members of the public and press unless the Board decides otherwise in relation to all or part of a meeting for reason of confidentiality or on other proper grounds.

In the event that the public and press are admitted to all or part of a Board meeting the Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and the public will be required to withdraw upon the Board resolving that in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public.

Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings without permission granted by resolution of the Trust.

- 3.2 **Calling of Meetings** – Ordinary meetings of the Trust shall be held at such times and places as the Board determines.

- 3.3 One third or more members of the Directors may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

- 3.4 **Notice of Meetings** - Before each meeting of the Trust, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or the Director of Corporate and Legal Affairs shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least three clear days before the meeting.

Lack of service of the notice on any Director shall not affect the validity of a meeting.

- 3.5 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.

- 3.6 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

- 3.7 Before any meeting of the Board which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's Headquarters at least three clear days before the meeting.

- 3.8 **Agenda and Supporting Papers** - The Agenda will be sent to Directors 3 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.

- 3.9 *A Director desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least six clear days before the meeting, subject to SO 3.3. Requests made less than six days before a meeting may be included on the agenda at the discretion of the Chairman.*

- 3.10 At any meeting of the Trust, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy-Chairman, if present, shall preside. If the Chairman and Deputy-Chairman are absent such Non-Executive Director as the Directors present shall choose shall preside.
- 3.11 **Annual Public Meeting** - The Trust will publicise and hold an annual public meeting by the end of September each year.
- 3.12 **Chairman's ruling** - The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.
- 3.13 **Voting** - All questions put to the vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of an equal vote, the person presiding shall have a second or casting vote.
- 3.14 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.15 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.16 If a Director so requests, his vote shall be recorded by name.
- 3.17 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.18 An officer who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.
- 3.19 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting whereafter they will be signed by the Chairman. The names of the directors present at the meeting shall be recorded in the minutes.
- 3.20 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.21 **Joint Directors** - Where a post of Executive Director is shared by more than one person:
- (a) both persons shall be entitled to attend meetings of the Trust:
 - (b) either of those persons shall be eligible to vote in the case of agreement between them:
 - (c) in the case of disagreement between them no vote should be cast;
 - (d) the presence of either or both of those persons shall count as one person for the purposes of SO 3.26 Quorum.
- 3.22 **Suspension of Standing Orders** - Except where this would contravene any provision in the Constitution, the Terms of Authorisation any statutory provision or authorisation by the Independent Regulator any one or more of the Standing Orders may be temporarily or permanently suspended at any meeting, provided that at least two thirds of the Board are present signifying their agreement to such suspension, including one Executive Director and one

Non-Executive Director.

- 3.23 A decision to suspend SOs shall be recorded in the minutes of the meeting. A separate record of matters discussed during this suspension shall be made and shall be available to the Directors.
- 3.24 The Audit Committee shall review every decision to suspend SOs.
- 3.25 These Standing Orders shall be amended only if:
- at least half the total of the Trust's Non-Executive Directors present vote in favour of the amendment, and
 - at least two-thirds of the Directors are present; and
 - the variation proposed does not contravene any applicable statutory provision or direction; and
 - the Independent Regulator's prior consent having first been obtained.
- 3.26 **Quorum** - No business shall be transacted at a meeting of the Trust unless at least three of the whole number of the Directors are present including at least one Executive Director and one Non-Executive Director. Joint directorships shall count as one post for the purpose of the Quorum.
- 3.27 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.28 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 6 or 7) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.29 **Record of attendance** – The names of the Chairman and Directors present at the meeting shall be recorded.

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to SO 4.1A below and subject to the Mental Health Act 1983, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below or by an Executive Director of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 4.1A **Hospital Managers' Powers to Discharge** - When the Trust is exercising the functions of the managers referred to in Section 45 of the Mental Health Act 2007 those functions may be exercised by any three or more persons authorised by the Board, each of whom is neither an Executive Director of the Board nor an employee of the Trust.
- 4.2 **Emergency Powers** - The powers which the Board has reserved to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.
- 4.3 **Delegation to Committees** - Subject to SO 4.1 above, the Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
- 4.4 **Delegation to Officers** – The Chief Executive is responsible for those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Trust.
- 4.5 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board.
- 4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Executive Director of Finance or other Executive Director to provide information and advise the Board in accordance with any statutory requirements.
- 4.7 The Board shall comply with the arrangements set out in the "Decisions Reserved for the Board and Scheme of Delegation".
- 4.8 **Overriding Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

5. COMMITTEES

- 5.1 **Appointment of Committees** - Subject to the Constitution and any applicable statutory provision or direction the Trust may appoint committees or sub-committees of the Trust, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust. The Standing Orders of the Trust shall apply to committees and sub-committees of the Trust.
- 5.2 A committee appointed under SO 5.1 may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust or other health service bodies in question); or wholly of persons who are not members of the Trust or other health service bodies or the committee of the Trust or other health service bodies in question
- 5.3 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide.
- 5.4 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 5.5 The Board shall approve the appointments to each of the committees, which it has formally constituted. Where the Board determines and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement of loss of earnings, and/or expenses in accordance where appropriate with national guidance.
- 5.6 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with any regulations and direction.
- 5.7 The Chief Executive will be appointed or removed by the Non-Executive Directors subject to approval by the Council of Governors.
- 5.8 Appointment of Executive Directors other than Chief Executive – It is for a committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors to appoint or remove the Executive Directors (the "**Appointments Committee**").
- 5.9 Committees, sub committees and joint committees established by the Board shall include:
- Audit Committee
 - Appointments Committee
 - Remuneration and Terms of Service Committee
 - Mental Health Act Committee
 - and such other committees as required to discharge the Trust's responsibilities
- 5.10 **Confidentiality** – 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 or shall otherwise have concluded on that matter, or if the Board shall resolve that any matter will remain confidential.
- 5.11 Committee meetings of the Board will not be held in public unless expressly stated.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 **Policy statements: general principles**

The Board of Directors will from time to time agree and approve Policy statements/ procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board of Directors minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

6.2 **Specific Policy statements**

Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Standards of Business Conduct and Conflicts of Interest Policy for the Trust staff;
- the staff Disciplinary and Appeals Procedures adopted by the Trust.

6.3 **Standing Financial Instructions**

Not used.

6.4 **Specific guidance**

Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Independent Regulator and the Secretary of State for Health (applicable to NHS Foundation Trusts):

- Caldicott Guardian 1997;
- Human Rights Act 1998;
- Freedom of Information Act 2000.

6.5 **Declaration of Interests** - The NHS Code of Accountability and the Constitution requires the Board Directors to declare interests which are relevant and material to the NHS board of which they are a Director. All existing Board of Directors should declare such interests. Any Board of Directors appointed subsequently should do so on appointment.

6.6 Interests which should be regarded as "relevant and material" are:

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS services.
- f) Research funding/grants that may be received by an individual or their department.

g) Interests in pooled funds that are under separate management.

6.7 If Board of Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman or Secretary.

6.8 **Advice on Interests**

If Board of Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman of the Trust or with the Trust's Company Secretary.

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

6.9 At the time Board of Directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next board meeting following the change occurring.

6.10 Board of Directors' directorships of companies likely or possibly seeking to do business with the Trust should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

6.11 During the course of a Board meeting, if a conflict of interest is established, the Board of Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.12 **Register of Interests** - The Director of Corporate and Legal Affairs will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Board of Directors.

6.13 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

6.14 The Register will be available to the public and the Director of Corporate and Legal Affairs will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

7. DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Order, if the Chairman or a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust 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.
- 7.2 Not used
- 7.3 The Trust shall exclude a Director from a meeting of the Trust while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 7.4 Any remuneration, compensation or allowances payable to a Director by virtue of 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.5 For the purpose of this Standing Order the Chairman or a Director shall be treated, subject to SO 7.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) a nominee of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
- or
- (b) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
- and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 7.6 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
 - (b) of an interest in any company, body or person with which he is connected as mentioned in SO 7.5 above 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.
- 7.7 Where a Director:
- (a) 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
 - (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the

total issued share capital of that class, this Standing Order shall not prohibit him/her 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/her duty to disclose his/her interest.

- 7.8 Standing Order 7 applies to a committee or sub-committee of the Trust as it applies to the Trust and applies to any member of any such committee or sub-committee (whether or not he is also a director of the Trust) as it applies to a Director of the Trust.

8. STANDARDS OF BUSINESS CONDUCT

- 8.1 **Policy** - Staff must comply with the national guidance contained in HSG(93)5 Standards of Business Conduct for NHS staff'. The following provisions should be read in conjunction with this document
- 8.2 **Hospitality** – Staff shall decline all except modest hospitality offered by potential or actual suppliers to the Trust. For the purposes of this Standing Order, modest hospitality shall be defined as that which is similar to the scale of hospitality which the NHS as an employer would be likely to offer.
- The Trust shall maintain a hospitality register, detailing both hospitality accepted and that which has been offered but declined. The register will be held by the Director of Corporate and Legal Affairs.
- 8.3 **Interest of Officers in Contracts** - If it comes to the knowledge of a Director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall at once give notice in writing to the Director of Corporate and Legal Affairs of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.4 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 8.5 All Board Directors are required, upon appointment, to subscribe to the NHS Code of Conduct and Code of Accountability.
- 8.6 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.7 A Director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.8 **Relatives of Directors or Officers** - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 8.9 The Directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.10 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
- 8.11 Where the relationship of an officer or another Director to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 9.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Director of Corporate and Legal Affairs in a secure place..
- 9.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee, thereof or where the Board has delegated its powers.
- 9.3 **Attestation of Sealings** - The common Seal of the Trust shall be affixed in the presence of the Chairman and authorised signatory.
- 9.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal.

10 SIGNATURE OF DOCUMENTS

- 10.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive or Director of Corporate and Legal Affairs as designated signatory.
- 10.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed), the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority.

11 MISCELLANEOUS

- 11.1 **Joint Arrangements** – The Trust also has statutory powers under section 75 of the 2006 Act to enter into prescribed arrangements jointly planned with local authorities.

ANNEX 8

Further Provisions

1. Eligibility for Membership

- 1.1 An individual shall not be eligible for Membership of the Trust if he:
- 1.1.1 is under 16 years of age at the date of his application or invitation to become a Member (as the case may be);
 - 1.1.2 fails or ceases to fulfil the criteria for Membership of any of the constituencies;
 - 1.1.3 has been placed on the registers of Schedule 1 offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 1.1.4 has been involved as a perpetrator in a serious incident of violence or has used persistent abusive behaviour in the last five years at any of the Trust's facilities or against any of the Trust's staff members or patients, provided that the Trust may resolve acting in the absolute discretion and that his so doing is part of his medical or mental condition and should not in itself preclude him from being a Member of the Trust;
 - 1.1.5 has been excluded from the Trust's premises or facilities from which services are provided;
 - 1.1.6 does not agree to abide by the Trust principles; or
 - 1.1.7 has been identified as a vexatious complainant.
- 1.2 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, the Trust shall carry out all reasonable enquiries to establish if this is the case.

Public Constituency

- 1.3 For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if;
- 1.3.1 his name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
 - 1.3.2 the Trust is otherwise satisfied that the individual lives in the said area.
- 1.4 An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if he ceases to live in the area of the Public Constituency of which he is a Member save as may otherwise be provided in this paragraph 1.
- 1.5 Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which he is a Member he shall forthwith advise the Trust that he is no longer eligible to continue as a Member and the Trust shall forthwith remove his name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other

Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than 14 days notice of its intention to do so.

- 1.6 Where a Member ceases to live temporarily in the area of the Public Constituency of which he is a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in the area of that Public Constituency of which he is a Member or will live in some other part of the Area of the Trust in which case the provisions of paragraph 1.4 shall apply as appropriate.

Staff Constituency

- 1.7 A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 7 of the Constitution.

2. Application for Membership

- 2.1 An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a member of a Staff Class of the Staff Constituency in accordance with paragraph 8.1 of this Constitution.
- 2.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply
- 2.2.1 the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;
 - 2.2.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;
 - 2.2.3 unless the applicant is ineligible for Membership or is disqualified from Membership, the Trust shall cause his name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;
 - 2.2.4 upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a member;
 - 2.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that Member:
 - 2.2.5.1 his full name and title;
 - 2.2.5.2 his date of birth;
 - 2.2.5.3 his full postal address;
 - 2.2.5.4 his home telephone number (if any);
 - 2.2.5.5 his email address (if any);
 - 2.2.5.6 the Constituency and class of which he is a Member;
 - 2.2.5.7 the date upon which he became a Member;
 - 2.2.5.8 his gender and ethnicity, and

2.2.5.9 his affiliation to any health and social care group

- 2.3 Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:
- 2.3.1 the Trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a Member of the Staff Class of the Staff Constituency relevant to him before inviting him to become a Member of the Trust and that it has all the information needed to complete the Register of Members in accordance with paragraph 2.2.5 above;
 - 2.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph 8.1, of the Constitution;
 - 2.3.3 unless the individual has within 28 days of the date upon which the Trust dispatches its invitation to him to become a Member advised the Trust that he does not wish to become a Member, the Trust shall thereupon enter that individual's name on the Register of Members and he shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to paragraph 2.3.2 to enable it to complete the relevant entry in the Register of Members.
- 2.4 No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.
- 2.5 For the avoidance of doubt, an individual shall become a Member on the date upon which his name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which his name is removed from the Register of Members as provided for in this Constitution.
- 2.6 The Trust shall procure that the Register of Members and all other Registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the Register of Members in particular is reviewed and updated as appropriate and no less often than every 28 days.
- 2.7 Where in the reasonable opinion of the Trust a Member is no longer eligible or is disqualified from Membership of the Trust it shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the Member addressed to him at the address given in the Register of Members of its intention to remove him from the Register and that Member has not within that period notified the Trust of his wish to continue as Member and provided proof satisfactorily to the Trust of his continued eligibility.

3. Members Meetings

- 3.1 The Trust shall hold a Members' Meeting for all the members (called the Annual Members' Meeting) within eight months of the end of each Financial Year of the Trust.
- 3.2 Any Members' Meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".
- 3.3 Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors, but not to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a Members' Meeting.
- 3.4 All Members' Meetings are to be convened by order of the Board of Directors.

- 3.5 The Board of Directors may:
- 3.5.1 decide where a Members' Meeting is to be held and may also for the benefit of the Members arrange for the Annual Members' Meeting to be held in different venues each year;
 - 3.5.2 make provision for a Members' Meeting to be held at different venues simultaneously or at different times. In making such provision the Board of Directors shall also fix an appropriate quorum for each venue provided that the aggregate of the quorum requirements shall be not less than the quorum set out in paragraph 3.26 of Annex 6 of this Constitution.
- 3.6 The Board of Directors shall present to the Members at the Annual Members' Meeting: -
- 3.6.1 a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such membership;
 - 3.6.2 the progress of the Membership strategy;
 - 3.6.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors;
 - 3.6.4 the results of the election and appointment of Governors; and
 - 3.6.5 any other reports or documentation it considers necessary or otherwise required by the Independent Regulator or the 2006 Act.
- 3.7 The Trust shall give notice of all Members' Meetings
- 3.7.1 by notice in writing to all Members;
 - 3.7.2 by notice prominently displayed at the Trust's main address and at all of the Trust's principal places of business;
 - 3.7.3 by notice on the Trust's website;
 - 3.7.4 to the Council of Governors and the Board of Directors, and to the Trust's auditors stating whether the meeting is an Annual or Special Members' Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting.
- at least 14 clear days before the date of the meeting.
- 3.8 The Chairman or in his absence the Deputy Chairman shall preside at all Members' Meetings of the Trust. If neither of the Chairman or the Deputy Chairman is present, the Governors present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act that person shall be Chairman. If no Governor is willing to act as Chairman or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chairman.

3A. Voting at Governor Elections

- 3A.1 A Member may not for the purpose of Section 60(1) of the 2006 Act vote at an election for a Public Governor unless within the specified period he has made a declaration in the specified form stating the particulars of his gratification to vote as a Member of the Public Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a

material particular.

4. Board of Directors: Disqualification

- 4.1 In addition to the grounds of disqualification set out in paragraph 26 of the Constitution, a person may also not be or continue as a Director of the Trust if:
- 4.1.1 in the case of a Non-Executive Director, he no longer satisfies the relevant requirements for appointment;
 - 4.1.2 he is a person whose tenure of office as a chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
 - 4.1.3 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a health service body;
 - 4.1.4 information revealed by a Criminal Records Bureau check is such that it would be inappropriate for him to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
 - 4.1.5 in the case of an Executive Director, he is no longer employed by the Trust.

5. Governors and Directors: Communication and Conflict

5.1 Summary

This paragraph 5 describes the processes intended to ensure a successful and constructive relationship between the Council 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 Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

5.2 Informal Communications

- 5.2.1 Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 5.2.2 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including: -
 - 5.2.2.1 participation of the Board of Directors in the induction, orientation and training of Governors;
 - 5.2.2.2 development of special interest relationships between Non-Executive Directors and Governors;
 - 5.2.2.3 discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer;
 - 5.2.2.4 involvement in membership recruitment and briefings at public events organised by the Trust.

5.3 Formal Communication

- 5.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.
- 5.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows: -
- 5.3.2.1 specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;
- 5.3.2.2 any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman but if the Chairman declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve his request to do so. The Chairman shall then raise the matter with the Board of Directors and provide the response to the Council of Governors.
- 5.3.2.3 joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate.
- 5.3.3 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 5.3.4 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:-
- 5.3.4.1 the Board of Directors proposals for the Strategic Direction and the Annual Business Plan;
- 5.3.4.2 the Board of Directors' proposals for developments;
- 5.3.4.3 Trust performance;
- 5.3.4.4 involvement in service reviews and evaluation relating to the trust's services; and
- 5.3.4.5 proposed changes, plans and developments for the Trust other than may be covered by paragraph 5.3.2.2 above.
- 5.3.5 The Board of Directors shall also present to the Council of Governors the Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.
- 5.3.6 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:-
- 5.3.6.1 attendance by the Board of Directors at a meeting of the Council of Governors;
- 5.3.6.2 provision of formal reports or presentations by executive directors to a meeting of the Council of Governors;
- 5.3.6.3 inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
- 5.3.6.4 reporting the views of the Council of Governors to the Board of Directors through the Chairman or Deputy Chairman.

5.4 Other Disputes

- 5.4.1 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.
- 5.4.2 The Chief Executive (or his nominated representative) shall:
- 5.4.2.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;
 - 5.4.2.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and
 - 5.4.2.3 communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.
- 5.4.3 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as soon as reasonably practicable be entitled to refer the matter to an independent assessor agreeable to both parties who will consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

5.5 Amendment of the Constitution

- 5.5.1 The Trust may make amendments to this Constitution with the approval of the Independent Regulator.
- 5.5.2 No proposal for amendment of this Constitution shall be put to the Independent Regulator unless it has been approved by the Board of Directors which shall first have consulted the Council of Governors on each such proposal.
- 5.5.3 The Constitution shall be reviewed on the first anniversary of the Trust's authorisation as an NHS Foundation Trust or as soon as reasonably practicable thereafter. Further review dates shall be established at that time.

5.6 Indemnity

Members of the Council of Governors and 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 and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Litigation Special Health Authority to cover such costs.

5.7 Validity of Actions

No defect or deficiency in the appointment or composition of the Council of Governors or the Board of Directors shall affect the validity of any action taken by them.

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

Schedule 2

Mandatory Goods and Services

Year: 2010-11
Trust: Derbyshire Healthcare NHS Foundation Trust

Sub care group	Currency	Learning disability 700	Adult mental illness 710	Child and adolescent psychiatry 711	Psychotherapy 713	Old age psychiatry 715	Addiction Services 721
Inpatient	Bed Days	16,316	50,160	-	-	33,188	-
Rehabilitation - Inpatient	Bed Days	-	10,476	-	-	-	-
PICU	Bed Days	-	488	-	-	-	-
Low Secure	Bed Days	-	5,548	-	-	-	-
Day Care	Attendances	-	10,785	-	-	10,251	-
CMHT	Community Contact	-	110,708	-	-	57,872	-
Assertive Outreach Team	Community Contact	-	8,618	-	-	-	-
Early Intervention team	Community Contact	-	12,145	-	-	-	-
Crisis resolution	Treatments	-	1,788	-	-	-	-
Psychiatric Liaison	Community Contact	-	3,273	-	-	-	-
Rehabilitation - Community	Community Contact	-	8,201	-	-	-	-
Court diversion	Community Contact	-	552	-	-	-	-
Prison Inreach	Community Contact	-	2,005	-	-	-	-
Outpatient	Attendances	1,084	18,457	-	-	7,982	-
CLDT	Community Contact	19,200	-	-	-	-	-
Other	Attendances	-	-	9,121	13,184	-	-
Other	Treatments	-	-	-	5,433	-	3,564
Total		36,600	243,204	9,121	18,617	109,293	3,564

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

Schedule 3

Mandatory Education and Training

Derbyshire Healthcare NHS Foundation Trust
Mandatory Education and Training Services
2010-11

Commissioning body	Educational body	Contract Length	Expiry date of contract	Student group	Type of training	Number of Students	Contract Value
		(Years)					£
East Midlands Healthcare Workforce Deanery and Yorkshire and Humber Healthcare Workforce Deanery	Sheffield University and Nottingham University	1 (Reviewed Annually)	31/03/2011	Junior Doctors (Training), Qualified Doctors (CPD)	Psychiatry	MADEL (Postgraduate) - 48 posts	£1,391,971
						SIFT (Undergraduate) - 215 Students (per year)	£273,000
University of Derby	University of Derby	1 (Reviewed Annually)	31/03/2011	Pre-Registration Nursing Students	Mental Health, General Nursing	382 (per year)	£59,000
Nottingham Trent University	Nottingham Trent University	1 (Reviewed Annually)	31/03/2011	Pre-Registration Nursing Students	Mental Health, General Nursing	568 (per year)	
East Midlands Healthcare Workforce Deanery	n/a	1 (Reviewed Annually)	31/03/2011	All Staff	Library and Knowledge Management	642 Registered Users	£25,000
East Midlands Healthcare Workforce Deanery	Various	1 (Reviewed Annually)	31/03/2011	All Professionally Qualified/Registered Staff (NMET Funded)	MH Specialist Modules e.g. EMDR	103	£28,000
East Midlands Healthcare Workforce Deanery	University of Nottingham and University of Lincoln	5	31/03/2015	Trainee Clinical Psychologists	Doctorate in Clinical Psychology	12 (at any one time)	£319,306
East Midlands Healthcare Workforce Deanery	Derby Corporate College. Prostart	1 (Reviewed Annually)	31/03/2011	HcAs, Admin and Apprentices (Bands 1-4)	Apprentices	29	£90,000

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

Schedule 4

Private Health Care

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 0.0%

The Trust is designated as a mental health foundation trust for the purposes of section 44 of the 2006.

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 1.5%.

DEFINITION:

Private patient income

Total patient
related income

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

Schedule 5

Limit on Borrowing

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

Pursuant to section 46 of the Act and the Prudential Borrowing Code, the Prudential Borrowing Limit for the year 2010/11 is the sum of the following:

- (i) Maximum cumulative long term borrowing (Tier 1): £33.0 million;
- and
- (ii) Approved working capital facility: not to exceed £8 million.

AUTHORISATION OF DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

Schedule 6

Information

Full details of the information which the Trust shall disclose to Monitor directly and to any third parties as may be specified by the Secretary of State and as may be varied from time to time are set out on Monitor's website at www.monitor-nhsft.gov.uk.