



**HERTFORDSHIRE PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST
CONSTITUTION**

January 2015

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1 NAME

- 1.1 The name of the foundation trust is "Hertfordshire Partnership University NHS Foundation Trust" (the "Trust").
- 1.2 In this Constitution, defined terms have the specific meanings given to them in paragraph 2 below.

2 INTERPRETATION AND DEFINITIONS

- 2.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act.
- 2.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 2.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 2.4 Headings are for ease of reference only and are not to affect interpretation.
- 2.5 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated or the context otherwise so requires.
- 2.6 In this Constitution:

the 2006 Act is the National Health Service Act 2006 (as amended).

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

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, and at the date of this Constitution is the Chief Executive.

Annual Accounts means those accounts prepared by the Trust pursuant to paragraph 40 of Schedule 7 to the 2006 Act.

Annual Members' Meeting has the meaning ascribed to it in paragraph 10 of this Constitution.

Annual Report means a report prepared by the Trust pursuant to paragraph 41 of Schedule 7 to the 2006 Act.

Appointed Governors means Governors who are appointed by the local authority or University of Hertfordshire or the partner organisations specified in Annex 3 of this Constitution.

Auditor means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 38 of this Constitution.

Board of Directors means the Board of Directors of the Trust as constituted in accordance with this Constitution.

Chair means the chairman of the Board of Directors and the Council of Governors. The expression "the Chair" shall be deemed to include the Vice-Chair or any other Non-Executive Director appointed if the Chair and/or Vice-Chair is absent from the meeting, otherwise unavailable;

Chief Executive means the Chief Executive of the Trust.

Clear Day means a day of the week not including Saturday, Sunday or a public holiday.

Conflict has the meaning ascribed to it in paragraph 32.1.1 of the Constitution.

Constitution means this Constitution together with the annexes and appendices attached hereto.

Council of Governors means the Council of Governors as constituted in this Constitution.

Director means a member of the Board of Directors, and includes both Executive Directors and Non-Executive Directors.

Director of Finance means the Chief Financial Officer of the Trust.

Directors' Code of Conduct means the Code of Conduct for Directors of the Trust, as adopted by the Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to.

Disclosure Barring Service means the Executive Agency of the Home Office to which the Secretary of State has delegated his functions under Part V of the Police Act 1977 in relation to applications for criminal records certificates and enhanced criminal record certificates as established by section 87(1) of the Protection of Freedoms Act 2012.

Executive Director means a member of the Board of Directors of the Trust who is also an Officer of the Trust.

Elected Governors means Governors who are elected by the Public Constituencies or the Staff Constituency.

Financial Year means a successive period of twelve months beginning with 1 April.

Forward Plan means the document prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act.

Governor means a member of the Council of Governors.

Governors' Code of Conduct means the Code of Conduct for Governors of the Trust, as adopted by the Trust and as amended from time to time by the Council of Governors which all Governors must subscribe to.

Health Overview and Scrutiny Committee means a local authority overview and scrutiny committee established pursuant to section 21 of the Local Government Act 2000.

Health Service Body shall have the meaning ascribed to it in Section 65(1) of the 2006 Act.

Interested Director has the meaning ascribed to it in paragraph 32.10.1 of the Constitution.

Member means a member of the Trust and the term "membership" shall be construed accordingly.

Model Rules for Elections means the election rules set out in Annex 4 of this Constitution.

Monitor means the corporate body of that name as provided by Section 61 of the 2012 Act.

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

NHS Foundation Trust Code of Governance means the best practice advice published by Monitor on 19 December 2013, as may be amended, varied or replaced by Monitor from time to time.

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

Non-Executive Director means a member of the Board of Directors who is not an Officer of the Trust.

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

Panel has the meaning ascribed to it in paragraph 19.1 of this Constitution.

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

Public Constituency has the meaning ascribed to it in paragraph 7.2 of this Constitution.

Scheme of Delegation means the reservation of powers to the Board of Directors and the scheme of delegation by the Board of Directors of such powers, as set out in the Trust's document titled 'Reservation of Powers to the Board and Delegation of Powers'.

Secretary means a person who may be appointed to act independently of the Board of Directors to provide advice on corporate governance issues to the Board of Directors and the Chair and monitor the Trust's compliance with the law, guidance issued by health service regulatory bodies (such as the Department of Health and Monitor) from time to time.

Staff Constituency has the meaning ascribed to it in paragraph 8.3 of this Constitution.

Standing Financial Instructions or SFI(s) means the Trust's standing financial instructions which regulate the conduct of Directors and Nominated Officers in relation to all financial matters with which they are concerned.

Standing Orders or SO(s) means the combined standing orders for the practice and procedure of the Council of Governors and Board of Directors (as may be varied from time to time) and as at the date of this Constitution are attached at Annex 5.

Trust means the Hertfordshire Partnership University NHS Foundation Trust.

Vice-Chair means the Non-Executive Director appointed by the Board of Directors to take on the Chair's duties if the Chair is absent for any reason or is otherwise unable to participate in the consideration or approval of any matter pursuant to this Constitution.

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

3 PRINCIPAL PURPOSE

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

4 POWERS

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 4.4 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.4 The powers conferred on the Trust by the Mental Health Act 1983, Section 23(6) (as amended) may only be exercised by a sub-committee of three or more persons, authorised by the Board of Directors, each of whom is neither an Executive Director nor an employee of the Trust.

5 MEMBERSHIP AND CONSTITUENCIES

- 5.1 The Trust shall have Members, each of whom shall be a member of one of the following constituencies:
 - 5.1.1 a Public Constituency; or
 - 5.1.2 the Staff Constituency.

6 APPLICATION FOR MEMBERSHIP

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust.
- 6.2 Subject to this Constitution, membership of the Trust is open to any individual who:
 - 6.2.1 is fourteen years of age or over;

6.2.2 is entitled under this Constitution to be a Member of one of the Public Constituencies or one of the classes of the Staff Constituency; and

6.2.3 (unless they are a member of one of the classes of the Staff Constituency) completes a membership application form in whatever form the Secretary specifies.

6.3 An eligible individual shall become a Member once his name has been entered in the Trust's register of Members.

7 PUBLIC CONSTITUENCY

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

7.2 Those individuals who live in an area specified as an area for the Public Constituencies are referred to collectively as the "Public Constituency".

7.3 The minimum number of Members in each Public Constituency is specified in Annex 1.

8 STAFF CONSTITUENCY

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

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

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

8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, this does not include individuals who assist or provide services to the Trust on a voluntary basis.

8.3 Those individuals who are eligible for membership of the Trust by reason of paragraphs 8.1 or 8.2 above are referred to collectively as the "Staff Constituency".

8.4 The Staff Constituency shall be divided into 5 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

8.5 The minimum number of Members in the Staff Constituency is specified in Annex 2.

AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF

8.6 An individual who is:

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

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

shall become a Member as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made. Such individual shall become a Member upon his name being entered in the Trust's register of Members unless he informs the Trust that he does not wish to do so.

9 MEMBERSHIP – RESTRICTIONS, DISQUALIFICATIONS AND REMOVAL

- 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. An individual must be at least 14 years old to become a member of the Trust.
- 9.3 An individual may not become or continue as a Member if:
- 9.3.1 he is or wishes to become a member of a Public Constituency and he no longer resides within the relevant catchment area as set out in Annex 1;
 - 9.3.2 he has been involved within the last five years, as a perpetrator, in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against registered volunteers;
 - 9.3.3 he has been excluded from any of the Trust's premises from which services are provided;
 - 9.3.4 in the opinion of the Council of Governors, there are reasonable grounds to believe that he is likely to act in a way that is detrimental to the interests of the Trust; or
 - 9.3.5 he is a former employee of the Trust and his contract has been terminated due to poor performance or misconduct.
- 9.4 A Member shall cease to be a Member of the Trust if they are expelled from membership under the Constitution. A Member may be expelled from the Trust following a report that an action of the Member is detrimental to the Trust. Criticism of a Member's action, accepted as a prima facie case to be heard, is to be reviewed by a sub-committee of the Council of Governors. The sub-committee of the Council of Governors should be comprised of three Governors (one of whom should be the Lead Governor) and the Chair. Should the case be found against the Member, a resolution will be put to the Council of Governors for approval regarding the removal of the Member. The Council of Governors may remove the Member if a simple majority of the Council of Governors present and voting at the meeting of the Council of Governors agree.
- 9.5 No person who has been expelled from membership of the Trust is to be re-admitted as a Member except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors.
- 9.6 A Member shall otherwise cease to be a Member of the Trust in the following circumstances:
- 9.6.1 they resign by notice to the Trust;

9.6.2 they die; or

9.6.3 if the Trust believes that the Member no longer lives at their registered address and the Trust does not know where that Member lives.

10 ANNUAL MEMBERS' MEETINGS

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

11 COUNCIL OF GOVERNORS – COMPOSITION

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

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

11.3 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. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

12 COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

12.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections using the single transferable vote as may be varied from time to time.

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

12.3 A variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 45 of this Constitution.

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

13 COUNCIL OF GOVERNORS - TENURE

13.1 A Governor may hold office for a period of up to 3 years.

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

13.3 A Governor may not hold office for more than 9 consecutive years. However, a Governor may, after no less than a period of 12 months following the end of the 9 consecutive years, be eligible to put their name forward for election for a further term of office.

13.4 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.

13.5 An Appointed Governor shall cease to hold office if the appointing organisation of that Governor withdraws its appointment of him or if he ceases to work for the appointing organisation as either an employee or a volunteer.

13.6 For the purposes of this paragraph 13, “year” means the period commencing immediately after the conclusion of the Annual Members’ Meeting at which a Governor’s election or appointment is announced and ending at the conclusion of the next Annual Members’ Meeting.

14 COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

14.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary or the Chair.

14.2 If a Governor fails to attend two consecutive meetings, unless they have applied to the Chair for special leave of absence and the Chair is satisfied that the absences were due to reasonable causes and they will be able to start attending meetings of the Council of Governors again within such a period as the Chair deems reasonable, then the Council of Governors may terminate the Governor’s term of office provided that three quarters of the Council of Governors present and voting at a meeting of the Council of Governors agree.

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

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

14.3.2 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;

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

14.3.4 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);

14.3.5 a director or a governor or director of another mental health NHS Trust or a foundation trust;

14.3.6 a spouse, partner, parent or child of a member of the Board of Directors;

14.3.7 a member of a local authority’s Health Overview and Scrutiny Committee;

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

14.3.9 a person who is required to notify the police of his name and address as a result of being convicted or cautioned for relevant sex offences pursuant to the Sex Offenders’ Act 1997 or other relevant legislation;

14.3.10 a person who has been disqualified from being a member of a local authority under the provisions of the Local Authority Act 2000 or any other applicable legislation within the areas of the Public Constituencies;

- 14.3.11 a person who, on the basis of disclosures obtained through an application to the Disclosure and Barring Service, is considered unsuitable by the Trust's Executive Director responsible for human resources;
 - 14.3.12 a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, expiry of a fixed term contract, disability, ill health or age from any paid employment with a Health Service Body. In other cases of dismissal, such as capability, an individual may be permitted to become a Governor, at the discretion of the Trust, and subject to full disclosure of the relevant facts concerning their dismissal from any paid employment with a Health Service Body;
 - 14.3.13 a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service, or for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 14.3.14 he has refused without reasonable cause to undertake any training which the Chair requires all Governors to undertake; or
 - 14.3.15 he has failed to sign and give to the Secretary a statement in the form required by the Secretary confirming acceptance of the Governors' Code of Conduct.
- 14.4 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.5 A Governor may be removed from the Council of Governors following report that an action of the Governor is detrimental to the Trust. Criticism of a Governors actions, accepted as a prima facie case to be heard, is to be reviewed by a sub-committee of the Council of Governors. The Governor may be suspended whilst the review is undertaken if the circumstances so warrant. This sub-committee should be comprised of three Governors (one of whom should be the independent Governor) and the Chair. Should the case be found against the Governor, a resolution will be put to the Council of Governors for approval regarding the removal of the Governor. The Council of Governors may remove the Governor from office if a majority of the members of the Council of Governors present and voting at a meeting of Council of Governors agree.

15 COUNCIL OF GOVERNORS – VACANCY

- 15.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of the term of office, the following provisions will apply:
- 15.1.1 Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
 - 15.1.2 When a vacancy arises for one or more Elected Governors, the Council of Governors shall have the option to take from the list of Members who stood for election at the most recent election of Governors from the class or constituency in question the next highest polling candidate. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Election as they apply to the Trust and shall be available to the Governors on two occasions within twelve months of the previous election. Governors appointed in this way shall hold office for a minimum of six months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of

Governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of the Governor whose cessation of office gave rise to the vacancy.

16 COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 16.1 The general duties of the Council of Governors are:
- 16.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and
 - 16.1.2 to represent the interests of the Members as a whole and the interests of the public.
- 16.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

17 COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 17.1 The Chair of the Trust (i.e. the chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below), or in their absence the Lead Governor is to preside at the meeting of the Council of Governors.
- 17.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to part of a meeting for reasons of commercial confidentiality or for other special reasons. The Chair may exclude any person from a meeting of the Council of Governors if that person is interfering with or preventing the proper conduct of the meeting.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.

18 COUNCIL OF GOVERNORS – STANDING ORDERS

- 18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 5.

19 COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

- 19.1 In this paragraph 19, “the Panel” means a panel of persons appointed by Monitor to which a Governor of the Trust may refer a question as to whether the Trust has failed or is failing to act in accordance with:
- 19.1.1 the Constitution; or
 - 19.1.2 provisions made by or under Chapter 5 of the 2006 Act.
- 19.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

20 COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

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

21 COUNCIL OF GOVERNORS – TRAVEL EXPENSES

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

22 BOARD OF DIRECTORS – COMPOSITION

- 22.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 22.2 The Trust Board of Directors will comprise a sufficient number of Executive and Non-Executive Directors in order to conduct its business.
- 22.3 One of the Non-Executive Directors shall be the Chairman.
- 22.4 One of the Executive Directors shall be the Chief Executive.
- 22.5 The Chief Executive shall be the Accounting Officer.
- 22.6 One of the Executive Directors shall be the Finance Director.
- 22.7 One of the Executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).
- 22.8 One of the Executive Directors is to be a registered nurse or a registered midwife (within the meaning of the Nursery and Midwifery Order 2001 (SI 2002/253)).
- 22.9 In the event that there are an equal number of Executive and Non-Executive Directors (including the Chairman) then the Chairman will have an additional vote.
- 22.10 The number of Executives shall never exceed the number of Non-Executives.

23 BOARD OF DIRECTORS – GENERAL DUTY

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

24 BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

- 24.1 A person may be appointed as a Non-Executive Director only if:
- 24.1.1 he is a member of the Public Constituency; and
- 24.1.2 he is not disqualified by virtue of paragraph 29 below.

25 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

- 25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors.
- 25.2 Removal of the Chair or another Non-Executive Directors shall require the approval of three-quarters of the members of the Council of Governors. Appointment of the Chair or another Non-Executive Directors shall require the approval of a majority of the Council of Governors present and voting at a meeting of the Council of Governors.
- 25.3 The initial Chair and the initial Non-Executive Directors are to be appointed in accordance with paragraph 26 below.

26 BOARD OF DIRECTORS – APPOINTMENT OF INITIAL CHAIR AND INITIAL OTHER NON-EXECUTIVE DIRECTORS

- 26.1 The chairman of the applicant NHS trust shall be appointed as the initial Chair of the Trust if he wishes to be appointed.
- 26.2 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.
- 26.3 The criteria for qualification for appointment as a Non-Executive Directors set out in paragraph 24 above (other than disqualification by virtue of paragraph 29 below) do not apply to the appointment of the initial Chair and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph 26.
- 26.4 An individual appointed as the initial Chair or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his 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.

27 BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

- 27.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present and voting at a general meeting of the Council of Governors.
- 27.3 The initial Chief Executive is to be appointed in accordance with paragraph 28 below.
- 27.4 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

28 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF INITIAL CHIEF EXECUTIVE

- 28.1 The chief officer of the applicant NHS trust shall be appointed as the initial Chief Executive of the Trust if he wishes to be appointed.

28.2 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.

29 BOARD OF DIRECTORS – DISQUALIFICATION

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

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

29.1.2 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;

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

29.1.4 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);

29.1.5 a member of the Council of Governors;

29.1.6 a spouse, partner, parent or child of a member of the Board of Directors;

29.1.7 a member of a local authority's Health Overview and Scrutiny Committee;

29.1.8 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

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

29.1.10 a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, from any paid employment with a Health Service Body;

29.1.11 in the case of a Non-Executive Director, a person who has refused without reasonable cause to fulfil any training requirement established by the Chair;

29.1.12 a person who has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct; or

29.1.13 in the case of a Non-Executive Director, a person who is no longer a member of the Public Constituency.

30 BOARD OF DIRECTORS – MEETINGS

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

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

Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

31 BOARD OF DIRECTORS – STANDING ORDERS

31.1 The standing orders for the practice and procedure of the Board of Directors are attached at Annex 5.

32 BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

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

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

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

32.2 The duty referred to in sub-paragraph 32.1.1 above is not infringed if:

32.2.1 the situation cannot reasonably be regarded as likely to give rise to a Conflict; or

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

32.3 The duty referred to in sub-paragraph 32.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a Conflict.

32.4 In sub-paragraph 32.1.2 above and 32.10.3(e) below, “third party” means a person other than:

32.4.1 the Trust; or

32.4.2 a person acting on its behalf.

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

32.6 If a declaration under this paragraph 32 proves to be, or becomes, inaccurate or incomplete a further declaration must be made.

32.7 Any declaration required by this paragraph 32 must be made before the Trust enters into the transaction or arrangement.

32.8 This paragraph 32 does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

32.9 A Director need not declare an interest:

32.9.1 If the interest cannot reasonably be regarded as likely to give rise to a Conflict.

32.9.2 If, or to the extent that, the Directors are already aware of the interest.

32.9.3 If, or to the extent that, the interest concerns terms of the Director’s appointment that have been or are to be considered:

- (a) by a meeting of the Board of Directors; or
- (b) by a committee of the Directors appointed for that purpose under the Constitution.

32.10 A matter shall have been authorised for the purposes of paragraph 32.2.2 above if:

32.10.1 The Directors, in accordance with the requirements set out in this paragraph 32.10, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 32.1.1 above to avoid Conflicts.

32.10.2 Any authorisation under this paragraph 32.10 will be effective only if:

- (a) the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution or in such other manner as the Directors may determine;
- (b) any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and
- (c) the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.

32.10.3 Any authorisation of a Conflict under this paragraph 32.10 may (whether at the time of giving the authorisation or subsequently):

- (a) extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
- (b) provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
- (c) provide that the Interested Director shall or shall not be an eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;
- (d) impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
- (e) provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, he will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and
- (f) permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.

- 32.10.4 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.
- 32.10.5 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 32.10.6 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 32.11 Subject to paragraph 32.12 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 32.12 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors (other than the Chair) at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

33 BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors. Any reappointment of a Non-Executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with the procedures which the Board of Directors has approved.
- 33.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.
- 33.3 The Trust may pay travelling and other expenses to Non-Executive Director at such rates as the Appointments and Remuneration Committee of the Council of Governors decides. These are to be disclosed in bands in the Annual Report.

34 REGISTERS

- 34.1 The Trust shall have:
- 34.1.1 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;
 - 34.1.2 a register of members of the Council of Governors;
 - 34.1.3 a register of interests of the Governors;
 - 34.1.4 a register of members of the Board of Directors; and

34.1.5 a register of interests of the Directors.

35 ADMISSION TO AND REMOVAL FROM THE REGISTERS

35.1 The Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution. Registers will be managed by the Secretary and updated and received by the Board of Directors at least annually.

36 REGISTERS – INSPECTION AND COPIES

36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations (including for the avoidance of doubt the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004/539)).

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

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

36.3.1 they are to be available for inspection free of charge at all reasonable times; and

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

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

37 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

37.1 Subject to paragraph 37.4 below, the Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

37.1.1 a copy of the current Constitution;

37.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and

37.1.3 a copy of the latest Annual Report.

37.2 Subject to paragraph 37.4 below, the Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

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

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

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

- 37.2.4 A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 37.2.5 A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 37.2.6 A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State for Health response to Monitor's decision), 65KC (action following Secretary of State for Health rejection of final report) or 65KD (Secretary of State for Health response to re-submitted final report) of the 2006 Act.
 - 37.2.7 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 37.2.8 A copy of any final report published under section 65I (administrator's final report).
 - 37.2.9 A copy of any statement published under section 65J (power to extend time) or 65 KC (action following Secretary of State for Health rejection of final report) of the 2006 Act.
 - 37.2.10 A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the documents listed in paragraphs 37.1 or 37.2 above is to be provided with a copy or extract.
- 37.4 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for doing so.

38 AUDITOR

- 38.1 The Trust shall have an Auditor.
- 38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

39 AUDIT COMMITTEE

- 39.1 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.

40 ACCOUNTS

- 40.1 The Trust shall keep proper accounts and proper records in relation to the accounts.
- 40.2 Monitor may with the approval of the Secretary of State for Health, give directions to the Trust as to the content and form of its accounts
- 40.3 The accounts are to be audited by the Auditor.
- 40.4 The Trust shall prepare in respect of each Financial Year Annual Accounts in such form as Monitor may, with the approval of the Secretary of State for Health, direct.

40.5 The functions of the Trust with respect to this paragraph 40 shall be delegated to the Accounting Officer.

41 ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

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

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

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

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

41.5 Each Forward Plan must include information about:

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

41.5.2 the income it expects to receive from doing so.

41.6 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 47.5.1, the Council of Governors must:

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

41.6.2 notify the Board of Directors of its determination.

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

42 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

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

42.1.1 the Annual Accounts;

42.1.2 any report of the Auditor on them; and

42.1.3 the Annual Report.

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

42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the Annual Members' Meeting.

43 INSTRUMENTS

43.1 The Trust shall have a seal. Its custody and use are set out in the Standing Orders.

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

44 DISPUTE RESOLUTION PROCEDURE

44.1 Where a dispute arises out of or in connection with this Constitution, the Trust and the parties to the dispute shall use all reasonable endeavours to resolve the dispute as quickly as possible.

44.2 Subject to paragraph 44.1 above, any dispute which cannot be so resolved (including a dispute between the Trust and a current or past Member or a Governor or office holder of the Trust) shall be submitted to an arbitrator agreed by the parties to the dispute or in the absence of such agreement to an arbitrator nominated by either the President of the Law Society of England and Wales or the President of the Institute of Chartered Accountants in England and Wales and the said arbitrator shall determine the rules of arbitration.

44.3 For the avoidance of doubt, the Secretary shall deal with any membership queries and other similar questions in the first place including any voting or legislation issues and shall otherwise follow a process for resolving such matters in accordance with any procedures agreed by the Board of Directors.

45 AMENDMENT OF THE CONSTITUTION

45.1 The Trust may make amendments to the Constitution only if:

45.1.1 more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors, approve the amendments; and

45.1.2 more than half of the members of the Board of Directors present and voting at a meeting of the Board of Directors approve the amendments.

45.2 Amendments made under paragraph 45.1 above shall take effect as soon as the conditions in that paragraph are satisfied, but the amendments shall have no effect in so far as the Constitution would, as a result of the amendments, not accord with Schedule 7 of the 2006 Act.

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

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

45.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment; and

45.3.3 if more than half of the Members present and voting at the Annual Members' Meeting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

45.4 Amendments by the Trust to its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine

whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

46 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 46.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 46.2 The Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions) and therefore, for the avoidance of doubt, no transactions are 'significant transactions' for the purposes of section 51A of the 2006 Act.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraph 7)

Eligibility to become a member of a Public Constituency is available to people living within the defined catchment area of the Trust. This will include residents from the following electoral areas (as defined for the purpose of local government elections):

| Area | Electoral Wards included in area | Minimum number of Members | Number of Governors |
|-------------------------------|-----------------------------------------|----------------------------------|----------------------------|
| | | | |
| Hertfordshire County Council | | 100 | 20 |
| The Rest of England and Wales | | 50 | 1 |

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 8)

Eligibility to become a member of the Staff Constituency is defined in paragraph 9 of the Constitution. The table below details the minimum number of staff within each class.

| Staff Class | Minimum Number of Members | Number of Governors |
|-----------------------------------------|----------------------------------|----------------------------|
| Acute & Rehabilitation Services | 20 | 1 |
| Community Services | 20 | 1 |
| Specialist Services | 20 | 1 |
| Learning Disability & Forensic Services | 20 | 1 |
| Corporate and support services | 20 | 1 |

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 11)

The composition of the Council of Governors is set out below, provided always that the number of Public Governors shall be more than half the total membership of the Council of Governors.

| Elected Governors | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|
| Public Governors | Number |
| Elected by members of the Public Constituency (as referred to in Annex 1) | 21 |
| Staff Governors | |
| Elected by members of the Staff Constituency (as referred to in Annex 2) | |
| Acute and Rehabilitation Services | 1 |
| Community Services | 1 |
| Specialist Services | 1 |
| Learning Disability and Forensic Services | 1 |
| Corporate and support services | 1 |
| Appointed Governors | |
| Local Authority Governors | |
| Appointed by Hertfordshire County Council (one Governor to represent Adult Care Services and one Governor to represent Children, Schools and Families) | 2 |
| University of Hertfordshire | |
| Appointed by the University of Hertfordshire | 1 |
| Partner Organisation Governors | |
| <ul style="list-style-type: none"> • Clinical Commissioning Groups Appointed by NHS Herts Valley Clinical Commissioning Group and NHS East & North Herts CCG each organisation to appointment one governor to represent the interests of the Commissioners | 2 |
| Hertfordshire Chamber of Commerce and Industry | 1 |
| St Albans City and District Council working with Broxbourne Borough Council, Dacorum borough Council, East Hertfordshire Council, Hertsmere Borough Council, North Hertfordshire District Council, Stevenage Borough Council, Three Rivers district Council, Watford Borough Council, Welwyn Hatfield Borough Council, Broadland District Council | 1 |
| Carers in Hertfordshire | 1 |
| Viewpoint | 1 |
| The Alzheimer's Society (Governor to be appointed from within the Hertfordshire branches of the Society) | 1 |
| MIND (Governor to be appointed from within the Hertfordshire branches of the organisation) | 1 |
| Mencap (Governor to be appointed from within the Essex branches of the Society) | 1 |
| Housing Associations (Hightown Praetorian and Churches HA, Aldwyck HA, Circle, North Herts Homes, Watford Community HA, Origin, B3 Living (formerly Broxbourne HA), Genesis HA, Affinity Sutton HA, Network HA, Trive Homes, Howard Cottage HA, Paradigm HA, Metropolitan HA, Places for People HA, Home Group) | 1 |
| TOTAL | 39 |

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 12)

HERTFORDSHIRE PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST (Council of Governors) 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
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

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. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
39. Rejected ballot papers
39. Rejected ballot papers
40. First stage
41. The quota
42. Transfer of votes
43. Supplementary provisions on transfer
44. Exclusion of candidates
45. Filling of last vacancies
46. Order of election of candidates
46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections
47. Declaration of result for contested elections
48. Declaration of result for uncontested elections

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
53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate
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 1 - Interpretation

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

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

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

Monitor is the corporate body known as monitor, as provided by Section 61 of the 2012 Act.

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 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 | Not later than the twenty seventh day before |

| | |
|------------------------------------------------------------------------------|------------------------------------------------------------------------------|
| nominated candidates | the day of the close of the poll. |
| Final day for delivery of notices of withdrawals by candidates from election | Not later than the twenty fifth day before the day of the close of the poll. |
| Notice of the poll | Not later than the fifteenth day before the day of the close of the poll. |
| Close of the poll | By 5.00pm on the final day of the election. |

3. Computation of time - (1) In computing any period of time for the purposes of the timetable -

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

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

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

Part 3 – Returning officer

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

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

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

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

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;

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

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

(2) The returning officer-

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

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

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

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

11. Declaration of interests – The nomination paper must state –

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

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

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

- (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 1 of the 2003 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

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

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

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

unless and until the returning officer-

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

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

- 1. 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,
- 2. that the paper does not contain the candidate's particulars, as required by rule 10;
- 3. that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- 4. that the paper does not include a declaration of eligibility as required by rule 12, or
- 5. that the paper is not signed and dated by the candidate, as required by rule 13.

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

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

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

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

(2) The statement must show –

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

as given in their nomination paper.

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

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

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

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

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

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the 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, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

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

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies) – (1) In respect of an

election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

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

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

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

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

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

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

Action to be taken before the poll

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

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

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the 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 spoiled ballot paper, the returning officer shall enter in a list (“the list of spoiled ballot papers”) –

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

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

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

- (a) is satisfied as to the voter’s identity,
- (b) has no reason to doubt that the voter did not receive the original ballot paper, and
- (c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

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

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

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

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

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

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

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

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

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

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

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

Procedure for receipt of envelopes

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

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

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

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

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

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

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

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

- (a) put the declaration of identity if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

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

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

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

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

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of 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. Interpretation of Part 6 – In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule stv44(4) below,

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

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule stv41 below,

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

“stage of the count” means –

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

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

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

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

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

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

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

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

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

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

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

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

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

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

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

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

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule stv44 has been complied with.

42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

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

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

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-

parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

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

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

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

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

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

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

whichever is the less.

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

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

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

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

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

43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

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

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

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

(3) All ballot papers transferred under rule stv42 or stv44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44. Exclusion of candidates – (1) If —

- (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv45 below, one or more vacancies remain to be filled,

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

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

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

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

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

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

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

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

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

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

(10) The returning officer shall after each stage of the count completed under this rule—

- (a) record –
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare—
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule stv42 and rule stv43.

(12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

(13) If when a candidate has to be excluded under this rule, two or more candidates each have the

same number of votes and are lowest—

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

(2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

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

46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

(4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

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 candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule stv39(1),

available on request.

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

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

Part 8 – Disposal of documents

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

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

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

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

(3) The returning officer must endorse on each packet a description of –

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

50. Delivery of documents – Once the documents relating to the poll have been sealed up and

endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

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

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

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

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

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

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

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

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

by any person without the consent of the Regulator.

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

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

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

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

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

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

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

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

Part 9 – Death of a candidate during a contested election

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

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

Part 10 – Election expenses and publicity

Election expenses

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

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

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

57. Election expenses incurred by other persons – (1) No person may -

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

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

Publicity

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

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

as it considers necessary.

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

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

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

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

(2) The information must consist of –

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

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

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

(4) The application must –

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

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

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

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

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

(9) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,

- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

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

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

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

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

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

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

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

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

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

Hertfordshire Partnership University NHS Foundation Trust

STANDING ORDERS

February 2014

FOREWORD

The Hertfordshire Partnership University NHS Foundation Trust has Standing Orders for the regulation of its proceedings and business.

Meetings and proceedings of the Trust need to be conducted in accordance with the rules set out in the Trust's Constitution) and these Standing Orders. Codes of best practice in Corporate Governance require the Board of Directors also to adopt Standing Financial Instructions and a Scheme of Delegation document.

These four documents provide a comprehensive regulatory framework for the internal control of the business conduct of the Trust. They fulfill the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less than properly.

All Executive Directors and Non-Executive Directors, Governors and all members of staff should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

INTRODUCTION

Statutory framework

NHS Foundation Trusts are governed by statute, mainly the 2006 Act.

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

Other purposes of the Trust (as required by the 2006 Act) shall be to provide goods and services for the purposes related to the provision of health care in accordance with its statutory duties.

The Trust may also carry on activities other than those mentioned above. These activities shall be for the purpose of making additional income or other resources available in order to carry on the Trust's Principal Purpose better.

In accordance with the Constitution of the Trust the Trust's Council of Governors and Board of Directors, have adopted these Standing Orders for the regulation of their respective proceedings and business.

The principal place of business of the Trust is:

99 Waverley Road
St Albans
Herts
AL3 5 TL

The functions of the Trust are conferred by legislation.

As a statutory body, the Trust has specified 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 as well as to the Secretary of State for Health.

The NHS Foundation Trust Code of Governance requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions as an integral part of Standing Orders setting out the responsibilities of individuals. For the avoidance of doubt, the SFIs do not form part of the Standing Orders or the Constitution.

NHS framework

The NHS Foundation Trust Code of Governance - requires that, inter alia, Board of Directors of foundation trusts draw up a schedule of decisions reserved to the Board of Directors, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to the Executive Committee and to senior executives (a Scheme of Delegation). It also requires the establishment of audit and remuneration committees with formally agreed terms of reference. The Code of Governance makes various requirements concerning possible conflicts of interest of members of the Board of Directors.

Delegation of powers

The Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee, sub-committee or joint committee appointed by

virtue of Standing Order 7 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit or as the Secretary of State for Health may direct". Delegated powers are covered in a separate document (Scheme of Delegation). This document has effect as if incorporated into these Standing Orders, but for the avoidance of doubt does not form part of the Standing Orders or the Constitution.

2 INTERPRETATION

- 2.1 Save as otherwise permitted by law, at any meeting the Chair shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive, the Secretary or the Director of Finance as appropriate).
- 2.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in the Constitution.
- 2.3 The provisions of paragraphs 2.1 to 2.5 (inclusive) of the Constitution apply to these Standing Orders, save that any reference to "Constitution" shall be read as a reference to these "Standing Orders".
- 2.4 All Directors, Governors and employees should adhere to the seven principles of public life, as set out within the Nolan report.

3 THE TRUST BOARD

The Trust

- 3.1 All business shall be conducted in the name of the Trust. The Trust has the functions conferred on it by the 2006 Act.

Members

- 3.2 Provisions relating to composition of Trust membership and restrictions, disqualifications and removals from such membership are set out in paragraphs 6 to 9 (inclusive) of the Constitution.

The Board of Directors

3.3 Composition of the Board of Directors

- 3.3.1 The composition of the Board of Directors shall be as set out in paragraph 22 of the Constitution.
- 3.3.2 Additional officers may attend the meetings of the Board of Directors but they shall not carry voting rights.

3.4 Appointment and powers of Vice-Chair

- 3.4.1 The Board of Directors shall elect one of the Non-Executive Directors as Vice-Chair. If the Chair is unable to discharge their office as chairman of the Board of Directors and the Council Governors, the Vice-Chair shall be the acting Chair.
- 3.4.2 Where the Chair has died or has ceased to hold office, or where he has been unable to perform his duties as Chair owing to illness or any other cause, the Vice-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his duties (as the case may be); and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his duties, be taken to include references to the Vice-Chair.

3.5 Joint Executive Directors

- 3.5.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which a statutory Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of this Standing Order as one person. Rules relating to such joint Executive Directors' attendance and voting at meetings is set out in Standing Order 5.35.

4 THE COUNCIL

4.1 Composition of the Council of Governors

- 4.1.1 The Trust is to have a Council of Governors, which is to be composed as set out in paragraph 11 of the Constitution and further detailed in Annex 3 of the Constitution.
- 4.1.2 The rules relating to the conduct of elections for membership of the Council of Governors are set out in Annex 4 of this Constitution.

4.2 Appointment of the Chair and Non-Executive Directors

- 4.2.1 The Chair and the Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office, including remuneration and allowances decided by the Council of Governors at a general meeting of the Council of Governors. Any re-appointment of a Non-Executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.

4.3 Terms of office of members of the Council of Governors

- 4.3.1 Paragraphs 13 and 14 of the Constitution set out the period of tenure for Governors and provisions relation to the termination or suspension of Governors.

5 MEETINGS OF THE BOARD OF DIRECTORS

- 5.1 **Admission of the public and the press** - Meetings of the Board of Directors shall be held in public and the public and representatives of the press shall be afforded facilities to attend such meetings of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:

'That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity of which would be prejudicial to the public interest'

- 5.2 The Chair 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 of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

'That in the interests of public order the meeting be adjourned for (the period to be specified) to enable the Board to complete business without the presence of the public.'

- 5.3 Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representative of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.
- 5.4 **Calling meetings** - Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen Clear Days written notice of the date and place of every meeting of the Board of Directors to all members of the Board of Directors.
- 5.5 Meetings of the Board of Directors are called by the Secretary, or by the Chair, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight Clear Days notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting of the Board of Directors.
- 5.6 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 5.7 **Notice of meetings** - Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on his behalf 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. A copy of the agenda of the meeting will also be sent to the Council of Governors before the meeting.
- 5.8 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 5.9 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice. 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.
- 5.10 Agendas will be sent to the Directors at least six Clear Days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but must at least be dispatched no later than three Clear Days before the meeting, save in emergency. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 5.11 **Setting the agenda** - The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to these Standing Orders.)
- 5.12 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 Clear Days before the meeting. Requests made less than 10 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.
- 5.13 **Petitions** - Where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next Board of Directors' meeting.

- 5.14 **Chairman of meeting** - At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting (including temporarily on the grounds of a declared conflict) the Vice-Chair, if there is one and he/she is present and not disqualified from participating, shall preside. If the Vice-Chair is absent (including temporarily on the grounds of a declared conflict), such Non-Executive Director as the Directors present shall choose shall preside.
- 5.15 **Notices of Motion** - A member of the Board of Directors desiring to move or amend a Motion shall send a written notice thereof at least 15 Clear Days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This SO 5.15 shall not prevent any Motion being moved during the meeting, without notice on any business mentioned on the agenda.
- 5.16 **Withdrawal of Motion or amendments** - A Motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 5.17 **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 bear the signature of the Director who gives it and also the signature of four other members of the Board of Directors. When any such Motion has been disposed of by the Board of Directors, it shall not be permissible for any Director other than the Chair to propose a Motion to the same effect within six months (the Chair may do so if he/she considers it appropriate).
- 5.18 **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.
- 5.19 When a Motion is under discussion or immediately prior to discussion it shall be open to a member of the Board of Directors to move as follows:
- An amendment to the Motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceed to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the Motion be now put. (*)
- *In the case of sub-paragraphs denoted by (*) above to ensure objectivity Motions may only be put forward by a Director who has not previously taken part in the debate and who is eligible to vote.
- 5.20 No amendment to the Motion shall be admitted if, in the opinion of the Chair, the amendment negates the substance of the Motion.
- 5.21 **Written Motions** - In urgent situations and with the consent of the Chair, business may be effected by a Directors' written Motion to deal with business otherwise required to be conducted at general meetings of the Board of Directors.
- 5.22 If all Directors entitled to attend and vote at a general meeting of the Board of Directors sign and return a copy of a written Motion then that Motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.
- 5.23 The effective date of the resolution shall be the date the last copy is signed and, until that date a Director who has previously indicated acceptance can withdraw and the Motion shall fail.

- 5.24 Once the resolution is passed, a copy certified by the Secretary shall be recorded in the Trust's minute book and signed by the Chair.
- 5.25 **Chair's ruling** -Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair on questions of order, relevancy, regularity and any other matters shall be final.
- 5.26 **Voting** - Every question at a meeting of the Board of Directors shall be determined by a majority of the votes of the Chair and members of the Board of Directors present and voting on the question and, in the case of the number of votes for and against a Motion being equal, the Chair shall have a second or casting vote.
- 5.27 All questions put to vote shall, at the discretion of the Chair, 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.
- 5.28 If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 5.29 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 5.30 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 5.31 An Officer who has been appointed formally by the Board of Directors to act for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending a meeting of the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without the formal appointment referred to in the preceding sentence may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.
- 5.32 **Minutes** - The minutes of the proceedings of a meeting of the Board of Directors shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding as Chair of that next ensuing meeting.
- 5.33 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting at which the minutes are considered.
- 5.34 Minutes shall be circulated in accordance with the wishes of the Board of Directors, and a copy shall be sent to the Council of Governors as soon as practicable after each meeting to which the minutes relate.
- 5.35 **Joint Executive Directors** - Where the post of Executive Director is shared jointly as referred to in SO 3.5:
- 5.35.1 either or both of those persons may attend or take part in meetings of the Board of Directors:
- 5.35.2 if both are present at a meeting they should cast one vote if they agree:
- 5.35.3 in the case of disagreements no vote should be cast;

- 5.35.4 the presence of either or both of those persons should count as the presence of one person for the purposes of SO 5.42 (Quorum).
- 5.36 **Suspension of Standing Orders** - Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting of the Board of Directors, provided that at least two-thirds of the Board of Directors are present, including one Executive Director and one Non-Executive Director and that a majority of those present vote in favour of suspension.
- 5.37 A decision to suspend one or more of the Standing Orders shall be recorded in the minutes of the meeting.
- 5.38 A separate record of matters discussed during the suspension of the Standing Orders shall be made and shall be available to the members of the Board of Directors.
- 5.39 No formal business may be transacted while the Standing Orders are suspended.
- 5.40 The Trust's Audit Committee shall review every decision to suspend the Standing Orders.
- 5.41 **Record of attendance** - The names of Directors present at each meeting of the Board of Directors shall be recorded in the minutes.
- 5.42 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Chair and the other members of the Board of Directors (including at least one Executive Director and at least one Non-Executive Director) is present.
- 5.43 For the avoidance of doubt, an Officer in attendance for an Executive Director but without formal acting up status as referred to in SO 5.31 may not count towards the quorum.
- 5.44 Subject to paragraphs 32.10, 32.11 and 32.12 of the Constitution, 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 (see SO 9) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Trust's appointments and remuneration committee).
- 5.45 **Confidentiality of proceedings** – Matters to be dealt with by the Board of Directors shall be confidential to the members of the Board of Directors. Directors and any employee of the Trust in attendance shall not reveal or disclose the contents of the Board of Director's meetings or reports to be discussed at such meetings without the agreement of the Chair.
- 5.46 **Observers at Board of Directors' meetings.** - The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any meetings of the Board of Directors and may change, alter or vary these terms and conditions as it sees fit. For the avoidance of doubt this SO 5.46 is subject to SOs 5.1 to 5.3 (inclusive) so the Board of Directors may not place unreasonable limitations on a member of the public's right to attend its meetings.
- 5.47 **Code of Conduct** – All Directors must comply with the Directors' Code of Conduct.

6 MEETINGS OF THE COUNCIL OF GOVERNORS

6.1 Admission of the public and the press

- 6.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

'That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest.'

- 6.1.2 The Chair 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 Council of Governors' business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:

'That in the interest of public order the meeting be adjourned for (the period to be specified) to enable the Board to complete business without the presence of the public.'

- 6.1.3 Nothing in these Standing Orders shall require the Council of Governors 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 as they take place without the prior agreement of the Council of Governors.

6.2 Calling meetings

- 6.2.1 Ordinary meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine.

- 6.2.2 Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by ten members of the Council of Governors (including at least two Elected Governors and two Appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' Clear Days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or ten members of the Council of Governors, whichever is the case, shall call such a meeting.

6.3 Notice of meetings

- 6.3.1 The Council of Governors is to meet at least four times in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen Clear Days written notice of the date and place of every meeting of the Council of Governors to all members of the Council of Governors. Notice will also be published on the Trust's website and in the Trust's membership newsletters.

- 6.3.2 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on his behalf shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least five Clear Days before the meeting.
- 6.3.3 Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 6.3.4 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 6.3.5 Failure to serve such a notice on at least fifteen Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

6.4 Setting the agenda

- 6.4.1 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. Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.
- 6.4.2 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 Clear Days before the meeting, subject to Standing Order 6.6. Requests made less than 10 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.
- 6.4.3 At any meeting of the Council of Governors, the Chair or, in their absence, the Vice-Chair, or in their absence the Lead Governor, is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, another Governor without a conflict of interest and appointed by the Governors, will chair that part of the meeting.

6.5 Annual general meeting

- 6.5.1 The Council of Governors shall hold an annual meeting of the Council of Governors and shall present to that meeting:
 - 6.5.1.1 a report on the proceedings of its meeting held since the last annual meeting;
 - 6.5.1.2 a report on the progress since the last annual meeting in developing the membership strategy;
 - 6.5.1.3 a report on day charge to the Governors which has taken place since the last annual meeting; and
 - 6.5.14 a report containing such comments as it wishes to make regarding the performance of the Trust.

6.5.2 The Council of Governors shall consider the annual accounts, any report of the Trust's Auditor on them and the annual reports presented to them in accordance with paragraph 42 of the Constitution.

6.6 Notices of Motion

6.6.1 A Governor desiring to move or amend a Motion shall send a written notice thereof at least 10 Clear Days before the meeting of the Council of Governors to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This Standing Order shall not prevent any Motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 6.9.

6.7 Withdrawal of Motion or amendments

6.7.1 A Motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

6.8 Motion to rescind a resolution

6.8.1 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 bear the signature of the Governor(s) who gives it and also the signature of 3 other Governors. When any such Motion has been disposed of by the Council of Governors, it shall not be permissible for any Governor other than the Chair to propose a Motion to the same effect within six months (the Chair may do so if he/she considers it appropriate).

6.9 Motions

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

6.9.2 When a Motion is under discussion or immediately prior to discussion it shall be open to a Governor to move as follows:

- An amendment to the Motion
- The adjournment of the discussion or the meeting.
- That the meeting proceed to the next business. (*)
- The appointment of an ad hoc committee to deal with a specific item of business.
- That the Motion be now put. (*)

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity Motions may only be put forward by a Governor who has not previously taken part in the debate.

6.9.3 No amendment to the Motion shall be admitted if, in the opinion of the Chair, the amendment negates the substance of the Motion.

6.10 Chair's ruling

6.10.1 Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of

the Chair on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

6.11 Voting

- 6.11.1 Every Motion at a meeting of the Council of Governors shall be determined by a majority of the votes of the Governors and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 6.11.2 All questions put to the vote shall, at the discretion of the Chair, 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.
- 6.11.3 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.
- 6.11.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 6.11.5 A Governor may grant to the Chair or another Governor a 'Proxy' or their power to vote in their absence at a Council of Governors meeting.
- (a) The proxy must be in writing and signed;
 - (b) The proxy must be lodged with the Secretary at Trust headquarters no later than 24 hours before the meeting. No proxies will be allowed after that deadline. Proxies will be date and time stamped on receipt;
 - (c) Proxies will be revoked by:
 - The filing of a subsequent proxy (before the above time limit has passed) in which case the later proxy revokes the former;
 - The resignation or death of a Governor providing this is known before the above time limit; or
 - The attendance of the Governor in person at the meeting.

6.12 Minutes

- 6.12.1 The Minutes of the proceedings of a Council of Governors meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at the ensuing meeting.
- 6.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 6.12.3 Minutes shall be circulated in accordance with the Governors' wishes. The minutes shall be made available to the public. (Save for parts of the meeting held in accordance with Standing Orders 6.1).

6.13 Suspension of Standing Orders

- 6.13.1 The Standing Orders may not be suspended by the Council of Governors.

6.14 Record of attendance

- 6.14.1 The names of the Governors present (and where relevant proxies) at each meeting of the Council of Governors shall be recorded in the minutes.

6.15 Quorum

- 6.15.1 No business shall be transacted at a meeting of the Council of Governors unless at least 12 members of the Council of Governors entitled to vote are present at the meeting with not less than four Elected Governors from the Public Constituency. If no quorum is present within 15 minutes of the time fixed for the start of the meeting, the meeting shall be adjourned to such time and place as the Council of Governors decides. [If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Governors present during the meeting is to be a quorum.]
- 6.15.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a Conflict (see Standing Order 9) 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.

6.16 Written resolutions

- 6.16.1 If all Governors entitled to attend and vote at a general meeting of the Council of Governors instead of meeting, sign and return a copy of a resolution then that resolution will be deemed to have been passed notwithstanding that the Governors have not gathered in one place.
- 6.16.2 The effective date of the resolution is the date a simple majority of members of the Council of Governors, or at least three-quarters of the members of the Council of Governors (as relevant) have signed and returned the resolution.
- 6.16.3 Once the resolution is passed, a copy certified by the Secretary must be recorded in the minute book.

6.17 Code of Conduct

- 6.17.1 All members of the Council of Governors are required to comply with the Governors' Code of Conduct.

7 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 7.1 The Board of Directors 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 this SO 8.1 or 8.2 below, or by an Executive Director (in each case subject to such restrictions and conditions as the Board of Directors thinks fit).
- 7.2 **Emergency powers** - The powers which the Board of Directors has retained for itself may in an emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors providing full details of how the power has been exercised and explaining why it was considered necessary to proceed under this Standing Order.

- 7.3 **Delegation to committees** - The Board shall agree from time to time to the delegation of its executive powers to committees, sub-committees or joint-committees, which it has formally constituted. The constitution and terms of reference of these committees, sub-committees or joint committees, and their specific executive powers shall be approved by the Board of Directors. Where the Board of Directors determines that persons who are neither Directors nor Officers shall be appointed as advisors to a committee, the terms of such appointment shall also be determined by the Board of Directors subject to the payment of travelling and other allowances being in accordance with such sums as may be determined by the Board of Directors.
- 7.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee, sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate Officers to undertake the remaining functions for which he/she will still retain accountability to the Board of Directors.
- 7.5 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors as indicated above.
- 7.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other Executive Directors to provide information and advise the Board of Directors in accordance with statutory requirements.
- 7.7 The arrangements made by the Board as set out in the Scheme of Delegation shall have effect as if incorporated in these Standing Orders, but for the avoidance of doubt it does not form part of the Standing Orders or the Constitution.
- 7.8 **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 of Directors for action or ratification. All Directors, Governors and Trust staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

8 COMMITTEES

8.1 Appointment of committees of the Board of Directors

- 8.1.1 The Board may appoint any committees and sub-committees consisting of such Directors and such persons as it thinks fit. The number of appointees who are not members of the Board of Directors should not form a majority at meetings of the committees and sub-committees unless specifically agreed by the full Board of Directors. Any committees and sub-committees so formed shall conform to any rules and requirements that may be imposed on it by the Board of Directors and shall report on acts and proceedings to the Directors as soon as it is reasonably practicable.
- 8.1.2 The Board of Directors will have a range of committees which will advise both it and the Council of Governors. These will include, but may not be limited to the following:

- (a) Audit Committee
- (b) Integrated Governance Committee
- (c) Finance and Investment Committee
- (d) Nominations and Remuneration Committee

8.2 Appointment of committees of the Council of Governors

- 8.2.1 The Council of Governors may appoint but not delegate its powers to committees consisting of its members (and others) to assist it in carrying out its functions. A committee appointed under this SO 8.2.1 may appoint a sub-committee.
- 8.2.2 Any committees or sub-committees established in accordance with SO 8.2.1 may appoint advisers who are not Governors to help them in their tasks.
- 8.2.3 A committee, chaired by the Lead Governor, shall be established to assist the Council of Governors with the nomination, appointment and remuneration of the Non-Executive Directors and such other matters as the Council of Governors may determine.

8.3 Standing Orders relating to all committees/sub-committees

- 8.3.1 The Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board of Directors or the Council of Governors.
- 8.3.2 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such review as the Board of Directors or Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

8.4 Confidentiality

- 8.4.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or Council of Governors (as relevant) or shall otherwise have concluded on that matter.
- 8.4.2 No Director, Governor or member of a Trust committee shall disclose any matter reported to the Board of Directors or Council of Governors (as relevant) or otherwise dealt with by that committee, notwithstanding that either the matter has been reported or action has been concluded, if the Board of Directors or Council of Governors (as relevant), or that committee resolves that it is confidential.

9 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 9.1 **Declaration of interests** - All Directors and Governors are required to declare interests which are relevant and material to the Trust. Each existing Director and Governor must declare such interests as soon as he/she becomes aware of it. Any Directors or Governors appointed subsequently should do so on appointment.
- 9.2 Subject to paragraphs 32.8 and 32.9 of the Constitution in relation to Directors, interests which should be regarded as "relevant and material" are:

- 9.2.1 Directorships, including non-executive directorships held in private companies or Plc (with the exception of those of dormant companies).
 - 9.2.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - 9.2.3 Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - 9.2.4 A position of trust in a charity or voluntary organisation in the field of health and social care.
 - 9.2.5 Any connection with a voluntary or other organisation contracting for NHS services.
 - 9.2.6 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).
 - 9.2.7 Any other commercial interest in the decision before the meeting.
- 9.3 A declaration which is required under Standing Order 9.1 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 and delivering it to the Secretary on appointment or as soon thereafter as the interest arises but in any case within 5 Clear Days of the Director or Governor (as applicable) becoming aware of the existence of the relevant material interest.
- 9.4 Interests declared by Directors or Governors pursuant to Standing Order 9.1, and any changes to such interests from time to time, shall be disclosed at the meeting of the Board of Directors or Council of Governors (as applicable) immediately following such declaration or change occurring.
- 9.5 The names of Directors or Governors who hold directorships of companies which are likely or possibly seeking to do business with the NHS should be published in the Annual Report. This information should be kept up to date for inclusion in succeeding Annual Reports.
- 9.6 During the course of a meeting of the Board of Directors or Council of Governors, if a Conflict is established, the relevant Director or Governor should at that meeting and as soon as practicable after that Conflict is established disclose that fact, withdraw from the meeting and play no part in the relevant discussion or decision. The requirement in this SO 9.6 for Directors to withdraw and not participate in relevant discussions or decisions is subject to paragraphs 32.8 to 32.10 (inclusive) of the Constitution.
- 9.7 There is no requirement in the NHS Foundation Trust Code of Governance for the interests of spouses or partners of Directors or Governors to be declared. However, for the purposes of Standing Orders 9 and 11, in the case of two persons closely related, the interest of one shall, if known to the other shall also be an interest of the other. For the purposes of this two persons shall be deemed to be closely related if they are husband and wife or living together as such or if either of the two or the spouse of either of them is the son or daughter or grandson or granddaughter or brother or sister or nephew or niece of the other or of the spouse of the other or the adopted relative of the other within the same degree, provided however that the requirement for Directors to declare such interests is subject to paragraphs 32.8 and 32.9 of the Constitution.

9.8 If Directors or Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or 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.

10 INDEMNITY

10.1 Governors, Directors and any other Officers who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors, the Board of Directors and any other Officer.

11 DISABILITY OF CHAIR, DIRECTORS AND GOVERNORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

11.1 If a Director or Governor 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. At the time the interests are declared, they should be recorded in the Directors' or Governors' meeting minutes (as applicable). For the avoidance of doubt, any change in such interests should be officially declared at the next relevant meeting following the change occurring.

11.2 The Chair may exclude a Director or Governor from a meeting of the Board of Directors or Council of Governors (as applicable) while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

11.3 For the purpose of this Standing Order 11, a Director or Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

11.3.1 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

11.3.2 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.

11.4 Standing Orders 11.1, to 11.3 are subject to the following:

11.4.1 in respect of Directors only, paragraphs 32.8 to 32.10 (inclusive) of the Constitution; and

11.4.2 Standing Orders 11.4 to 11.6 (inclusive).

11.5 Any remuneration, compensation or allowances payable to the Chair or a Governor by virtue of paragraphs 11 and 18(1) of Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order 11.

- 11.6 A Director or Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 11.6.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - 11.6.2 of an interest in any company, body or person with which he is connected as mentioned in SO 11.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director or Governor (as applicable) in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 11.7 Where a Director or Governor has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body (whichever is less), and 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 11 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 in accordance with the Constitution.
- 11.8 This Standing Order 11 applies to a committee, sub-committee and joint committee of the Board of Directors or Council of Governors as it applies to the Board of Directors or Council of Governors respectively and accordingly also applies to a member of any such committee, sub-committee or joint committee (whether or not he is also a Director or Governor of the Trust).

12 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 12.1 **Custody of seal** - The Common Seal of the Trust shall be kept by the Secretary in a secure place.
- 12.2 Deeds are required for:
- 12.2.1 all freehold land property transactions;
 - 12.2.2 all leases that extend for three years or more;
 - 12.2.3 any 'gratuitous promise' (i.e. a transaction in which there is no consideration for the value being given); and
 - 12.2.4 any contract with an annual value of £1,000,000 or more.
- 12.3 **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 of Directors or of a committee, thereof or where the Board of Directors has delegated its powers.
- 12.4 Every contract with a value exceeding £1,000,000 (one million pounds) shall be executed under seal. Before any document is sealed it must be approved and signed by the Director of Finance (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer Nominated by him/her who shall not be within the originating directorate).

- 12.5 **Register of sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors annually. (The report shall contain details of the seal number, the description of the document and date of sealing).

13 SIGNATURE OF DOCUMENTS

- 13.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 13.2 The Chief Executive or nominated Officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee, sub-committee or standing committee with delegated authority.

14 CHARITABLE FUNDS

- 14.1 The Trust will operate a charitable fund namely the Hertfordshire Partnership University NHS Foundation Trust Charity. The Board of Directors will act as corporate trustee.

15 MISCELLANEOUS

- 15.1 **Standing Orders to be given to Members and Officers** - It is the duty of the Chief Executive to ensure that existing Directors, Governors, Members and Officers and all new appointees are notified of and understand their responsibilities under the Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. Copies shall also be placed on the Trust's intranet to allow ease of access to the latest version. New designated Officers shall be informed in writing and shall receive copies where appropriate of the Standing Orders.
- 15.2 **Documents having the standing of Standing Orders** – The Standing Financial Instructions and the Scheme of Delegation shall have effect as if incorporated into these Standing Orders, but for the avoidance of doubt these documents do not form part of the Standing Orders or the Constitution.
- 15.3 **Review of Standing Orders** – The Standing Orders shall be reviewed annually by the Board of Directors. The requirement for review extends to all documents having the effect as if incorporated into the Standing Orders.
- 15.4 **Breach of Standing Orders** - Failure to comply with the Standing Orders is a disciplinary matter which could result in dismissal.

16 STATEMENT ON BEHALF OF THE TRUST

- 16.1 Statements, including press statements, on behalf of the Trust on policy matters shall be made only by the Chair, Chief Executive or senior Officer duly authorised by the Chief Executive.