

Constitution

Mid Cheshire Hospitals NHS Foundation Trust

Version Control

Version	Date	Author	Changes
1	April 2008	-	-
2	April 2010	R Alcock	<ul style="list-style-type: none"> • Amendments to names of the Public Constituency to reflect changes in Borough Council • Removal of appointed Governor from Cheshire County Council and replaced by an appointed Governor from Cheshire East Council and Cheshire West & Chester Council • Removal of requirement for an appointed Governor from University Hospital of South Manchester NHS FT • Amendments to wording for Gifts & Bequests
3	December 2011	R Alcock	<ul style="list-style-type: none"> • To extend boundaries of Public Constituencies • To enable the PCT appoint a second Governor • To remove the GP Leads meeting as a Partnership Organisation able to appoint a Governor • Replace the Voluntary Action groups with 'Community and Voluntary Service Cheshire East and Cheshire Community Development Trust' as partnership organisations • Increase the number of Governors sitting on the Nominations & Remuneration Committee • Amendment to ways of advertising Annual Members' Meetings
4	March 2013	M Steele	<p>Changes to reflect second commencement Order of the health & Social Care Act 2012 which included reference to the Health & Social Care Act 2012 and amendments to</p> <ul style="list-style-type: none"> • the principal purpose of the Trust • wording for Annual report & Accounts to reflect changes relating to Non NHS Income • the definition of Monitor • whom the direction on the Annual Accounts is received
5	April 2014	M Steele	<p>Following a full review of the Constitution, amendments were made to consider requirements under the Health & Social Care Act, Monitor's revised Model Constitution, current practice and advice from the Trust's Legal Advisors.</p>

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Mid Cheshire Hospitals NHS Foundation Trust

1 Name

The name of the Foundation Trust is Mid Cheshire Hospitals NHS Foundation Trust (the Trust).

2 Principal purpose

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

2.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

2.3 The Trust may provide goods and services for any purposes related to –

2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

2.3.2 the promotion and protection of public health.

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

2.5 A supplementary purpose of the Trust is the provision of research and education for the purpose of the health service and related services in England and Wales.

3 Powers

3.1 The powers of the Trust are set out in the National Health Service Act 2006 (referred to hereafter as the 2006 Act) as amended by the Health & Social Care Act 2012 (referred to hereafter as the 2012 Act).

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

3.3 Any of these powers may be delegated to a committee of directors, or to an executive director.

4 Membership and constituencies

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

4.1.1 a Public Constituency;

4.1.2 a Staff and Volunteers Constituency; or

4.1.3 a Patients and Carers' Constituency

4.2 All membership is individual, and there shall be no facility for corporate membership, although an individual member of this Trust may also be a member of one or more other NHS foundation trusts. Members are not entitled to payment of any sort, or to preferential receipt of any healthcare provided by the Trust (see also **Annex 9**).

5 Application for membership

An individual who is eligible to become a member of the Trust may do so on application to the Trust at any time.

6 Public Constituency

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

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

6.3 The minimum number of members in each Public Constituency is specified in **Annex 1**.

7 Staff and Volunteers Constituency

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

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

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

7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the Staff and Volunteers Constituency provided that such individuals have exercised these functions continuously for a period of at least 12 months. This would include an individual who is registered with the Trust to undertake individual voluntary work at premises, or in services managed by the Trust, or is registered with a voluntary organisation that is accredited by the Trust to undertake voluntary work at premises, or in services managed by the Trust.

7.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff and Volunteers Constituency.

7.4 Individuals who meet the qualifying requirements for membership of the Staff and Volunteers Constituency in 7.1 and 7.2, with the exception of the qualifying time periods, may become members of an alternative Constituency if they are eligible to do so, provided that they transfer to the relevant class of the Staff and Volunteers Constituency when they have achieved the qualifying time periods defined in 7.1 or 7.2.

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

7.6 The minimum number of members in each class of the Staff and Volunteers Constituency is specified in **Annex 2**.

7.7 An individual who is:

7.7.1 eligible to become a member of the Staff and Volunteers Constituency, and

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

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

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8 Patients and Carers' Constituency

- 8.1 An individual who:
- 8.1.1 is registered on the Master Patient Index maintained by the Trust, and who has, within the period specified below, attended any of the Trust's hospitals as a patient; or
 - 8.1.2 is the principal carer of a patient defined in 8.1.1 above, other than as a requirement of a contract, whether paid or unpaid, with a statutory, voluntary or commercial agency, or as a volunteer for a voluntary organisation, and who has, within the period specified below, attended any of the Trust's hospitals as the carer of that patient.
may become or continue as a member of the Trust.
- 8.2 The period referred to above shall be the period of five years immediately preceding the date of an application by the patient or carer to become a member of the Trust.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Patients and Carers' Constituency.
- 8.4 The Patients and Carers' Constituency shall be divided into three classes of individuals who are eligible for membership of the Constituency, each description of individuals being specified within **Annex 3** and being referred to as a class within the Patients and Carers' Constituency.
- 8.5 An individual providing care to a patient in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patients and Carers' Constituency.
- 8.6 The minimum number of members in each class of the Patients and Carers' Constituency is specified in **Annex 3**.

9 Restriction on Membership

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class. However, he may transfer existing membership of a constituency, or of a class within a constituency, to an alternative constituency, or of an alternative class within a constituency, of which he meets the qualifying membership criteria subject to paragraph 7.4.
- 9.2 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in **Annex 9**.

10 Annual Members' Meeting

- 10.1 The Trust shall hold an annual meeting of its members (Annual Members' Meeting). The Annual Members' Meeting shall be open to members of the public.
- 10.2 Further provisions about the Annual Members' Meeting are set out in **Annex 9**.

11 Council of Governors: Composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The composition of the Council of Governors is specified in **Annex 4**.

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- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within their 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 4**.

12 Council of Governors: Election of Governors

- 12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be published by the Department of Health from time to time.
- 12.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution. The Model Rules for Elections current as at the date of the Trust's authorisation are attached at **Annex 5**.
- 12.3 A variation of the Model Rules by the Department of Health shall not constitute an amendment to the terms of this constitution.
- 12.4 An election, if contested, shall be by secret ballot.

13 Council of Governors: Tenure

- 13.1 An elected or appointed governor may hold office for an initial period of up to three years.
- 13.2 An elected governor shall be re-eligible for re-election at the end of his initial term, but may not hold office for more than three consecutive terms.
- 13.3 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.
- 13.4 A vacancy that arises amongst the elected governors for any reason other than expiry of term of office will be offered to the candidate who received the next highest number of votes in the same class and constituency in the most recent election, or, should that candidate decline, offered to each of the remaining next highest polling candidates in order until the seat is filled. If the election was uncontested, or if none of the previous candidates is willing to serve as a governor, a further election will be held.
- 13.5 An appointed governor shall be eligible for re-appointment at the end of his term, but may not hold office for more than three consecutive terms.
- 13.6 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 13.7 Where a vacancy arises amongst the appointed governors, the appointing organisation shall be asked to appoint a replacement to hold the remainder of that term of office.

14 Council of Governors: Disqualification and Removal

- 14.1 The following may not become or continue as a member of the Council of Governors:
- 14.1.1a a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2a 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;
 - 14.1.3a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or

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not) for a period of not less than three months (without the option of a fine) was imposed on him.

14.1.4a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;

14.2 Governors must be at least 18 years of age at the date they are nominated for election or appointment.

14.3 Further provisions as to the circumstances in which an individual may not become, or continue as, a member of the Council of Governors are set out in **Annex 6**.

14.4 Provisions for the removal of a governor are set out in **Annex 6**.

15 Council of Governors: Roles & Responsibilities and Duties

15.1 The Council of Governors is accountable for several key functions that form part of the governance framework of the Trust:

- to provide advice to the Board of Directors, which the Board of Directors shall take into account in setting the strategic direction of the Trust within the overall policies and priorities of the Trust and the NHS, defining its annual and longer term objectives, and agreeing plans to achieve them;
- to exercise leadership, enterprise, integrity and balanced judgment in the discharge of its role and functions within the Trust;
- to ensure that high standards of corporate governance and personal behaviour are maintained in the conduct of the business of the whole Trust;
- to oversee the overall delivery of planned results by monitoring performance against objectives and ensuring appropriate action is taken when necessary;
- to develop effective dialogue with the Board of Directors so that there can be effective dialogue between the Trust and the local community on its plans and performance, and that these plans and performance are responsive to the community's needs;
- to maintain relationships with members;

15.2 Further details of the Council of Governors' powers are set out in Annex 6.

16 Council of Governors: Meetings of Governors

16.1 The Chairman of the Trust (*i.e.* the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25 below) shall preside at meetings of the Council of Governors. In his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 26 below) shall preside at meetings of the Council of Governors.

16.1.1 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

16.1.2 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 director's performance), the Council of Governors may require one or more of the directors to attend a meeting.

17 Council of Governors: Standing Orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at **Annex 7**.

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18. Council of Governors – Referral to the Panel

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

18.1.1 to act in accordance with its Constitution, or

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

18.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting, at a meeting of the Council of Governors, approve the referral.

19 Council of Governors: Conflicts of Interest of Governors

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

20 Council of Governors: Travel Expenses

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust, subject to the provisions of the Trust's policy on the payment of such expenses.

21 Council of Governors: Further Provisions

Further provisions with respect to the Council of Governors are set out in **Annex 6**.

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. At least half of the Board, excluding the Chairman, shall be non-executive directors.

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive Chairman;

22.2.2 non-executive directors, one of whom shall be the Senior Independent Director nominated by the full Board of Directors; and one of whom shall recruited by virtue of the financial experience and expertise that he has acquired in the commercial sector.

22.2.3 executive directors.

22.3 One of the executive directors shall be the Chief Executive.

22.4 The Chief Executive shall be the Accounting Officer.

22.5 One of the executive directors shall be the Finance Director.

22.6 One of the executive directors is to be a registered medical practitioner, or a registered dentist (within the meaning of the Dentists Act 1984).

22.7 One of the executive directors is to be a registered nurse or a registered midwife.

22.8 The Trust shall have a Trust Secretary who shall be neither a governor nor a director but a senior manager who is accountable to the Board of Directors, and reports to the

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Chief Executive. The Board of Directors shall appoint or remove the Trust Secretary in consultation with the Council of Governors.

- 22.9 The Trust Secretary shall act in the same capacity for the Board of Directors and the Council of Governors, and his functions shall include:
- acting as Secretary to the Board of Directors and the Council of Governors, and keeping minutes of their meetings;
 - attending all meetings of members, and keeping minutes of those meetings;
 - attending as necessary meetings of any committee established by either the Board of Directors or the Council of Governors;
 - being the nominated addressee for all legal documents served on the Trust.
 - ensuring that the register of members, and other registers and records required by this Constitution, are maintained and kept up to date;
 - taking charge of the Trust's seal;
 - publishing to members in an appropriate form any relevant information about the Trust's affairs;

23. Board of Directors – General Duty

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

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

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

- 24.1 he is a member of the Public Constituency, or
- 24.2 he is a member of the Patients and Carers' Constituency, or
- 24.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and
- 24.4 he is not disqualified by virtue of paragraph 28 below.

25 Board of Directors: Appointment and Removal of Chairman and Other Non-Executive Directors

- 25.1 The Council of Governors at a meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other non-executive directors (see **Annex 6**).
- 25.2 Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

26 Board of Directors: Appointment of Deputy Chairman

The Council of Governors at a meeting of the Council of Governors shall appoint one of the non-executive directors as a Deputy Chairman.

27 Board of Directors: Appointment and Removal of the Chief Executive and Other Executive Directors

- 27.1 The non-executive directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

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28 Board of Directors: Disqualification

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

- 28.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 28.2 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.
- 28.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 28.4 a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- 28.5 a person who, on the basis of disclosures obtained through a Disclosure and Barring Service check, is not considered suitable by the Chair and Chief Executive, with appropriate advice from Human Resources, to become or continue as a director.

29 Board of Directors: Meetings

- 29.1 Meetings of the Board of Directors shall be open to members of the public. Notice of a meeting of the Board of Directors will be given on the Trust's website. Members of the public may be excluded from a meeting for special reasons.
- 29.2 Before holding a meeting, the Trust Secretary on behalf of the Board of Directors must send a copy of the agenda of the meeting to each Governor. As soon as practicable after holding a meeting, the Trust Secretary on behalf of the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

30 Board of Directors: Standing Orders

The standing orders for the practice and procedure of the Board of Directors are attached at **Annex 8**.

31 Board of Directors: Conflicts of Interest of Directors

- 31.1 The duties that a director of the Trust has by virtue of being a director include in particular –
 - 31.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
 - 31.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 31.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if –
 - 31.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 31.2.2 The matter has been authorised in accordance with the constitution.
- 31.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 31.4 In sub-paragraph 31.1.2, "third party" means a person other than –
 - 31.4.1 The Trust, or
 - 31.4.2 A person acting on its behalf.

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- 31.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.
- 31.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 31.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 31.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 31.9 A director need not declare an interest –
- 31.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 31.9.2 If, or to the extent that, the directors are already aware of it;
 - 31.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
 - 31.9.3.1 By a meeting of the Board of Directors, or
 - 31.9.3.2 By a committee of the directors appointed for the purpose under the constitution.

32 Board of Directors: Remuneration and Terms of Office

- 32.1 The Council of Governors at a meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.
- 32.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

33 Registers

The Trust shall have:

- 33.1 a register of members showing, in respect of each member, the constituency and, where there are classes within it, the class, to which he belongs;
- 33.2 a register of members of the Council of Governors;
- 33.3 a register of interests of the governors;
- 33.4 a register of directors; and
- 33.5 a register of interests of the directors.

34 Registers: admission to and removal from

Further provisions with respect to admissions to, and removals from, the registers are set out in Annex 6: Paragraph 3 and **Annex 9**: Paragraph 1.5.

35 Registers: Inspection and Copies

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

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35.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

- 35.2.1 any member of the Patients and Carers' Constituency; or
- 35.2.2 any other member of the Trust, if the member so requests.

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

- 35.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 35.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

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

36 Documents available for public inspection

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

- 36.1.1 a copy of the current constitution;
- 36.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
- 36.1.3 a copy of the latest annual report;

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

- 36.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
- 36.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
- 36.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
- 36.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 36.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 36.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 36.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 36.2.8 a copy of any final report published under section 65I (administrator's final report),
- 36.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 36.2.10 a copy of any information published under section 65M (replacement

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of trust special administrator) of the 2006 Act.

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

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

37 Auditor

37.1 The Trust shall have a financial auditor, and may appoint auditors for other purposes.

37.2 The Council of Governors shall appoint or remove the financial auditor, or any other auditor, at a meeting of the Council of Governors.

38 Audit Committee

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

39 Annual Accounts

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

39.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

39.3 The accounts shall be audited by the Trust's financial auditor.

39.4 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 direct.

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

40 Annual Report, Forward Plans and non-NHS work

40.1 The Trust shall prepare an annual report and send it to Monitor.

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

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

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

40.5 Each forward plan must include information about-

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

40.5.2 the income it expects to receive from doing so.

40.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must, at a meeting of the Council of Governors,-

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

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40.6.2 notify the directors of the Trust of their decision

40.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

41 Presentation of the Annual Accounts and Reports to the Governors and Members

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

41.1.1 the annual accounts

41.1.2 any report of the auditor on them

41.1.3 the annual report.

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

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

42 Instruments

42.1 The Trust shall have a seal.

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

43 Amendments to the Constitution

43.1 The Trust may make amendments of its constitution only if –

43.1.1 More than half of the members of the Council of Governors of the Trust voting, at a meeting of the Council of Governors, approve the amendments, and

43.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

43.2 Amendments made under paragraph 43.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

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

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

43.3.3 The Trust must give the members an opportunity to vote on whether they approve the amendment.

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If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

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

44. Mergers etc. and significant transactions

- 44.1 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.

- 44.2 The Trust may enter into a significant transaction only if more than half the members of the Council of Governors voting, at a meeting of the Council of Governors, approve the Trust entering into the transaction.

- 44.3 "For the purposes of this paragraph:

44.3.1 A transaction is an investment or divestment; and

44.3.2 A transaction is significant if its value equates to more than 25% of the Trust's:

44.3.2.1 gross assets;

44.3.2.2 income; or

44.3.2.3 gross capital (following completion of the transaction), calculated with reference to the Trust's opening balance sheet for the financial year in which approval is being sought.

- 44.4 For the purposes of paragraph 44.3, the term 'transaction' shall not include a contract with a commissioning organisation for the provision of services for the purposes of the health service in England or Wales, unless such a contract includes or involves the provision of additional services by the Trust commissioned under that contract for the first time and those additional services meet the threshold set out in paragraph 44.3.2, in which case, the initial inclusion of those additional services in the contract will be deemed to be a "significant transaction."

- 44.5 If more than half of the members of the Council of Governors voting, at the meeting, decline to approve a significant transaction or any part of it, the Council of Governors must approve a written Statement of Reasons for its rejection, to be provided to the Board of Directors.

- 44.6 Nothing in this paragraph shall prevent the Board of Directors from appropriate engagement with the Council of Governors, as it sees fit, to provide information on any other transaction or arrangement which the Trust may enter, which does not constitute a "significant transaction" within the meaning of this paragraph.

45 Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012

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

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

Constitution means this constitution and all annexes to it.

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

The NHS Provider Licence is the Licence issued by Monitor to the Trust under Chapter 3 of Part 3f the 2012 Act.

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

the 2006 Act is the National Health Service Act 2006.

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

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Annex 1

The Public Constituency

The Public Constituency shall comprise the areas of Cheshire East Local Authority and Cheshire West and Chester Local Authority and will be divided into three areas, based on the ward boundaries as defined in the Cheshire West and Chester (Electoral Changes) Order 2011 and the Cheshire East (Electoral Changes) Order 2011, both made under section 58 (4) of the Local Democracy, Economic Development and Construction Act 2009.

The Area of Congleton (and other surrounding areas) part of Cheshire East

Alderley Edge	}	
Alsager	}	
Bollington	}	
Brereton Rural	}	
Broken Cross and Upton	}	
Chelford	}	Membership of the area is open to any
Congleton East	}	person resident in any of these electoral wards.
Congleton West	}	Minimum membership will be 450.
Dane Valley	}	
Disley	}	
Gawsworth	}	
Handforth	}	
High Legh	}	
Knutsford	}	
Macclesfield Central	}	
Macclesfield East	}	
Macclesfield Hurdsfield	}	
Macclesfield South	}	
Macclesfield Tytherington	}	
Macclesfield West and Ivy	}	
Middlewich	}	
Mobberley	}	
Odd Rode	}	
Poynton East and Pott Shrigley	}	
Poynton West and Adlington	}	
Prestbury	}	
Sandbach Elworth	}	
Sandbach Ettiley Heath and Wheelock	}	
Sandbach Heath and East	}	
Sandbach Town	}	
Sutton	}	
Wilmslow Dean Row	}	
Wilmslow East	}	
Wilmslow Lacey Green	}	
Wilmslow West and Chorley	}	

The Area of Crewe and Nantwich (and other surrounding areas) part of Cheshire East

Audlem	}	
Bunbury	}	
Crewe Central	}	
Crewe East	}	Membership of the area is open to any
Crewe North	}	person resident in any of these electoral wards.
Crewe South	}	
Crewe St Barnabas	}	Minimum membership will be 1,100.
Crewe West	}	
Haslington	}	

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Leighton }
Nantwich North and West }
Nantwich South and Stapeley }
Shavington }
Willaston and Rope }
Wistaston }
Wrenbury }
Wybunbury }

The Area of Vale Royal and all other parts of Cheshire West and Chester

Blacon }
Boughton }
Broxton }
Chester City }
Chester Villages }
Davenham and Moulton }
Doddleston and Huntington }
Ellesmere Port Town }
Elton }
Farndon }
Frodsham }
Garden Quarter }
Gowy }
Grange }
Great Boughton }
Handbridge Park } Membership of the area is open to any
Hartford and Greenbank } person resident in any of these electoral wards.
Helsby } Minimum membership will be 1,200
Hoole }
Kingsley }
Lache }
Ledsham and Manor }
Little Neston and Burton }
Malpas }
Neston }
Netherpool }
Newton }
Rossmore }
Saughall and Mollington }
Marbury }
Shakerley }
St Pauls }
Strawberry }
Sutton }
Tarporey }
Tarvin and Kelsall }
Tattenhall }
Upton }
Weaver and Cuddington }
Whitby }
Willaston and Thornton }
Winnington and Castle }
Winsford Over and Verdin }
Winsford Swanlow and Dene }
Winsford Wharton }
Witton and Rudheath }

Minimum Membership of the Public Constituency

2,750 members

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Annex 2

The Staff and Volunteers Constituency

The Staff and Volunteers Constituency shall comprise seven classes, based on the occupation or role of the individual member:

The Class of Medical Practitioners and Dental Staff

Membership of the class is open to any person employed by the Trust, or exercising functions for the purposes of the Trust, as a Medical or Dental Practitioner, in accordance with paragraph 7 above. Minimum membership will be 22.

The Class of Qualified Nursing and Midwifery Staff

Membership of the class is open to any person employed by the Trust, or exercising functions for the purposes of the Trust, as a qualified Nurse or Midwife, in accordance with paragraph 7 above. Minimum membership will be 179.

The Class of Other Professionally Qualified Clinical Staff

Membership of the class is open to any person employed by the Trust as a member of the professionally qualified clinical staff (other than medical practitioners or dental staff; or qualified nursing and midwifery staff), or exercising the functions of such staff for the purposes of the Trust, in accordance with paragraph 7 above. Minimum membership will be 57.

The Class of Clinical Support Staff [e.g. Administrative and Clerical staff supporting clinical services; HCA; AHP Assistant; Scientific and Technical]

Membership of the class is open to any person employed by the Trust as a member of the clinical support staff, or exercising the functions of such staff for the purposes of the Trust, in accordance with paragraph 7 above. Minimum membership will be 189.

The Class of Non-Clinical Support Staff [e.g. Administrative and Clerical staff supporting non-clinical services; and staff in Estates, Facilities, Finance, Human Resources; Information Management and Technology *IM&T*]

Membership of the class is open to any person employed by the Trust as a member of the non-clinical-support staff, or exercising the functions of such staff for the purposes of the Trust, in accordance with paragraph 7 above. Minimum membership will be 121.

The Class of Recognised Representatives of Trades Unions and Staff Organisations

Membership of the class is open to any person who is an accredited representative of a recognised trade union or staff organisation, and who is employed by the Trust in accordance with paragraph 7 above. Minimum membership will be 10.

The Class of Volunteers

Membership of the class is open to any person registered with the Trust to undertake individual voluntary work at premises, or in services, managed by the Trust; or registered with a voluntary organisation that is accredited by the Trust to undertake voluntary work at premises, or in services, managed by the Trust, in accordance with paragraph 7 above. Minimum membership will be 30.

Minimum Membership of the Staff and Volunteers Constituency

608 members

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Annex 3

The Patients and Carers' Constituency

The Patients' and Carers' Constituency shall comprise three classes:

The Class of Patients

Membership of the class is open to any patient registered on the Master Patient Index maintained by the Trust, and who has, within the five years preceding application for membership, attended any of the Trust's hospitals as a patient. Minimum membership will be 230.

The Class of Principal Carer of a Patient Aged Sixteen Years or More

Membership of the class is open to a person who is the principal carer of a patient, where that patient is sixteen years or more and falls within the definition The Class of Patients above, other than as a requirement of a contract, whether paid or unpaid, with a statutory, voluntary or commercial agency. Minimum membership will be 10.

The Class of Principal Carer of a Patient Aged Fifteen Years or Less

Membership of the class is open to a person who is the principal carer of a patient, where that patient is aged fifteen years or less, and falls within the definition of The Class of Patients above, other than as a requirement of a contract, whether paid or unpaid, with a statutory, voluntary or commercial agency. Minimum membership will be 10.

Minimum Membership of the Patients and Carers' Constituency

250 members

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Annex 4

The Council of Governors: Composition

Elected Governors

Public Constituency

Members in the areas of the Public Constituency will elect ten governors:

- Members living in the Congleton (and other surrounding areas) part of Cheshire East will elect two governors.
- Members living in the Crewe and Nantwich (and other surrounding areas) part of Cheshire East will elect four governors.
- Members living in the Vale Royal part and all other parts of Cheshire West and Chester will elect four governors.

Patients and Carers' Constituency

Members in the classes of the Patients and Carers' Constituency will elect six governors:

- Members in the Patients Class will elect four governors.
- Members in the Class of Principal Carer of a Patient where that Patient is Aged Sixteen Years or More will elect one governor.
- Members in the Class of Principal Carer of a Patient where that Patient is Aged Fifteen Years or Less will elect one governor.

Staff and Volunteers Constituency

Members in the classes of the Staff and Volunteers Constituency will elect seven governors:

- Members in the Medical Practitioners and Dental Staff Class will elect one governor.
- Members in the Qualified Nursing and Midwifery Staff Class will elect one governor.
- Members in the Other Professionally Qualified Clinical Staff Class will elect one governor.
- Members in the Clinical Support Staff [e.g. HCA, AHP Assistant, Scientific and Technical] Class will elect one governor.
- Members in the Non-Clinical Support Staff [e.g. Non-Clinical Administrative and Clerical, Facilities Staff, Finance, Human Resources, Information Management and Technology IM&T, Estates] Class will elect one governor.
- Members in the Class of Recognised Representatives of Trades Unions and Staff Organisations will elect one governor.
- Members in the Volunteers Class will elect one governor.

Appointed Governors

NHS South Cheshire Clinical Commissioning Group and NHS Vale Royal Clinical Commissioning Group shall each appoint one Governor.

Cheshire East Council shall appoint one governor.

Cheshire West and Chester Council shall appoint one governor

The Trust identifies the following partnership organisations, who may appoint a governor on the formal invitation of the Board of Directors in the first instance and on the formal invitation of the Council of Governors thereafter:

- Congleton Chamber of Commerce, South Cheshire Chamber of Commerce, and Warrington Chamber of Commerce and Industry are partnership organisations, and will be invited to appoint one governor among them
- Manchester Metropolitan University is a partnership organisation, and will be invited to appoint one governor
- Community and Voluntary Service Cheshire East and Cheshire Community Development Trust are partnership organisations, and will be invited to appoint one governor among them

Annex 5

The Model Rules for Elections

The Trust has adopted the Model Election Rules contained in this annex. It will determine the results of elections using the 'first past the post' option (see **Fpp** below).

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3 Computation of time

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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;

Regulator means the Independent Regulator for NHS foundation trusts; and

The 2006 Act means the National Health Service Act 2006.

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

Part 2 Timetable for Election

2 Timetable

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

Timetable of proceeding

Publication of notice of election: not later than the fortieth day before the day of the close of the poll.

Final day for delivery of nomination papers to returning officer: not later than the twenty-eighth day before the day of the close of the poll.

Publication of statement of nominated candidates: not later than the twenty-seventh day before the day of the close of the poll.

Final day for delivery of notices of withdrawals by candidates from election: not later than twenty-fifth day before the day of the close of the poll.

Notice of the poll: not later than the fifteenth day before the day of the close of the poll.

Close of the poll: by 5.00pm on the final day of the election

3 Computation of time

(1) In computing any period of time for the purposes of the timetable;

(a) a Saturday or Sunday;

(b) Christmas Day, Good Friday, or a bank holiday, or

(c) a day appointed for public thanksgiving or mourning,

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

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

Part 3 Returning Officer

4 Returning Officer

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

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

5 Staff

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

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6 Expenditure

The corporation is to pay the returning officer:

- (a) any expenses incurred with proper authorisation 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 7 of the 2006 Act or of the Constitution; and,
- (b) for a member of the Public Constituency, or the Patients and Carers' 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.

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13 Signature of candidate

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

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

14 Decisions as to the validity of nomination

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

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

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

(a) that the paper is not received on or before the final time and date for return of nomination

papers, as specified in the notice of the election,

- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, as required by rule 13.

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

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

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

15 Publication of statement of candidates

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

(2) The statement must show:

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination paper.

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

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

16 Inspection of statement of nominated candidates and nomination papers

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

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

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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 the 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 the Public Constituency or the Patients and Carers' Constituency a declaration of identity must be issued with each ballot paper.

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

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

(b) that the voter has not marked or returned any other voting paper in the election, and

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(c) for a member of the Public Constituency or the Patients and Carers' 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.

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

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

The poll

26 Eligibility to vote

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

27 Voting by persons who require assistance

(1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

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

28 Spoilt ballot papers

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

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter's identity, and
- (b) has ensured that the declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):

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

29 Lost ballot papers

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

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

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

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

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

30 Issue of replacement ballot paper

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

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

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- (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 the Public Constituency, or the Patients and Carers' Constituency, 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 Constituency, or the Patients and Carers' 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.

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

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

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34 Declaration of identity but no ballot paper for the Public Constituency or the Patients and Carers' Constituency

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

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

35 Sealing of packets

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

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

Part 6 Counting the Votes

Stv36 Interpretation of Part 6

In Part 6 of these rules:

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

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

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

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

"non-transferable vote" means a ballot paper:

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

preference as used in the following contexts has the meaning assigned below:

(a) **first preference** means the figure **1** or any mark or word which clearly indicates a first (or only) preference,

(b) **next available preference** means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a **second preference** is shown by the figure **2** or any mark or word which clearly indicates a second preference, and a third preference by the figure "3" or any mark or word which clearly indicates a third preference, and so on,

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

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

stage of the count means:

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

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

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

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

37 Arrangements for counting of the votes

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

38 The count

(1) The returning officer is to:

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

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

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

Stv39 Rejected ballot papers

(1) Any ballot paper –

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words **one, two, three** and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

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

Fpp39 Rejected ballot papers

(1) Any ballot paper:

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which votes are given for more candidates than the voter is entitled to vote,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

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

(a) elsewhere than in the proper place,

(b) otherwise than by means of a clear mark,

(c) by more than one mark,

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

(4) The returning officer is to:

(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and

(b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

(a) does not bear proper features that have been incorporated into the ballot paper,

(b) voting for more candidates than the voter is entitled to,

(c) writing or mark by which voter could be identified, and

(d) unmarked or rejected because of uncertainty, and, where applicable, each heading must record the number of ballot papers rejected in part.

Stv40 First stage

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

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

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

Stv41 The quota

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

(2) The result, increased by one, of the division under paragraph (1) above (any fraction being

disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

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

Stv42 Transfer of votes

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

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

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

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

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

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

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

(b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to

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sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

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

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

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

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

(b) at the value at which that vote was received by the candidate from whom it is now being Transferred, whichever is the less.

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

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

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

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

Stv43 Supplementary provisions on transfer

(1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if :

(a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

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

(a) record the total value of the votes transferred to each candidate,

(b) add that value to the previous total of votes recorded for each candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and

(d) compare:

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

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

(4) Where a ballot paper is so 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.

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Stv44 Exclusion of candidates

(1) If:

(a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule stv45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

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

(a) ballot papers on which a next available preference is given, and

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

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

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

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

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

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

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

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

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

(a) record:

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

(b) add that total to the previous total of votes recorded for each candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare;

(i) the total number of votes then recorded for each candidate together with the total number

of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

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

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

(13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

(b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

Stv45 Filling of last vacancies

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

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

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

Stv46 Order of election of candidates

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

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

Fpp46 Equality of votes

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

Part 7 Final Proceedings in Contested and Uncontested Elections

Fpp47 Declaration of result for contested elections

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

(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each candidate who he or she has declared elected:

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- (i) where the election is held under a proposed constitution pursuant to powers conferred on Mid Cheshire Hospitals NHS Trust by section 33 of the 2006 Act, to the Chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
 - (c) give public notice of the name of each candidate whom he or she has declared elected.
- (2) The returning officer is to make:
- (a) the total number of votes given for each candidate (whether elected or not), and
 - (b) the number of rejected ballot papers under each of the headings in rule fpp39(5), available on request.

Stv47 Declaration of result for contested elections

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on Mid Cheshire Hospitals NHS Trust by section 33 of the 2006 Act, to the Chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.
- (2) The returning officer is to make –
- (a) the number of first preference votes for each candidate whether elected or not,
 - (b) any transfer of votes,
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
 - (d) the order in which the successful candidates were elected, and
 - (e) the number of rejected ballot papers under each of the headings in rule stv39(1), available on request.

48 Declaration of result for uncontested elections

- In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:
- (a) declare the candidate or candidates remaining validly nominated to be elected,
 - (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.

Part 8 Disposal of Documents

49 Sealing up of documents relating to the poll

- (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- (a) the counted ballot papers,
 - (b) the ballot papers endorsed with **rejected in part**,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of –
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoilt ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of –
- (a) its contents,

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- (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 re-sent, 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 chairman by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

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

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

53 **Application for inspection of certain documents relating to an election –**

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

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

by any person without the consent of the Regulator.

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

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

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

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:
 - (i) that his or her vote was given, and
 - (ii) that the regulator has declared that the vote was invalid.

Part 9 Death of a Candidate During a Contested Election

Fpp54 Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- (2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to:
- (a) count and record the number of ballot papers that have been received, and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of:
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

Stv54 Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count standing order 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.

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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 equivalent to the value of £100 in 2007.

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.

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Part 11 Questioning Elections and the Consequence of Irregularities

61 Application to question an election

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by:
 - (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must:
 - (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
 - (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
 - (b) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
 - (c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 Miscellaneous

62 Secrecy

- (1) The following persons:
 - (a) the returning officer,
 - (b) the returning officer's staff,must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:
 - (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
 - (ii) the unique identifier on any ballot paper,
 - (iii) the candidate(s) for whom any member has voted.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

63 Prohibition of disclosure of vote

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

64 Disqualification

- A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:
- (a) a member of the corporation,
 - (b) an employee of the corporation,
 - (c) a director of the corporation, or
 - (d) employed by or on behalf of a person who has been nominated for election

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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.

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Annex 6 Council of Governors: Additional Provisions

Contents

- 1 Eligibility to be a Governor
- 2 Requirement of Governor to Notify Trust
- 3 Termination of Office and Removal of Governors
- 4 Election of Governors
- 5 Roles and Responsibilities
- 6 Appointment of Non-Executive Directors (including Chairman and Deputy Chairman)
- 7 Remuneration of the Chairman and other Non-Executive Directors

1 Eligibility to be a Governor

A person may not become a governor of the Trust, and if already holding such office will immediately cease to do so, if he:

- 1.1 is or has been subject to a Sexual Offences Prevention Order, a Foreign Travel Order, or a Risk of Sexual Harm Order made under the provisions of the Sexual Offences Act 2003;
- 1.2 is incapable by reason of mental disorder, illness or injury of managing or administering his property and affairs;
- 1.3 on the basis of disclosures obtained through an application to the Disclosure and Barring Service, is not considered suitable by the Trust's executive director responsible for workforce;
- 1.4 is a director of the Trust, or a governor or director of another NHS Foundation Trust or any other NHS body, unless such Foundation Trust or NHS body is an appointing organisation which is appointing him under this Constitution;
- 1.5 has had his tenure of office as the Chairman or as a member or director of a health service body terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 1.6 has previously been removed from office as a governor of the Trust;
- 1.7 being a member of the Public Constituency, or the Patients and Carers' Constituency, fails to sign a declaration in the form specified by the Council of Governors of the particulars of his qualification to vote as a member of the Trust, and that he is not prevented from being a member of the Council of Governors;
- 1.8 has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 1.9 has had his name removed from any list maintained by the NHS Commissioning Board pursuant to Parts 4, 5, 6 and 7 of the 2006 Act, and has not subsequently had his name included in such a list, and due to the reason(s) for such removal, he is not considered suitable by the Trust's executive director responsible for workforce after due enquiry.
- 1.10 is the spouse, partner, parent or child of a member of the Council of Governors or Board of Directors of the Trust;
- 1.11 fails to agree to comply with the Trust's Code of Conduct for Governors;
- 1.12 is under eighteen years of age, though eligible to become a member at sixteen years of age;
- 1.13 is a member of a local authority's scrutiny committee covering health matters;

2 Requirement of Governor to notify Trust

Where a person has been elected or appointed to be a governor and he becomes disqualified from office under the provisions of this constitution, he shall notify the Trust Secretary in writing of such disqualification as soon as practicable upon becoming aware of it.

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3 Termination of office and removal of Governors

A person holding office as a governor shall immediately cease to do so if:

- 3.1 he resigns by notice in writing to the Trust Secretary;
- 3.2 it otherwise comes to the notice of the Trust Secretary at the time that the governor takes office or later that the governor is disqualified,
- 3.3 he fails to attend two Council of Governor meetings in any financial year, unless the other governors are satisfied that:
 - (a) the absences were due to reasonable causes; and
 - (b) he will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
- 3.4 in the case of an elected governor, he ceases to be a member of the Trust;
- 3.5 in the case of an appointed governor, the appointing organisation terminates the appointment;
- 3.6 he has failed to undertake any training which the Council of Governors requires all governors to undertake
- 3.7 he has failed to sign and deliver to the Trust Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's Code of Conduct;
- 3.8 he is removed from the Council of Governors by a resolution approved by a majority of the remaining governors present and voting at a General Meeting on the grounds that:
 - (a) he has committed a serious breach of the Trust's Code of Conduct, or
 - (b) he has acted in a manner detrimental to the interests of the Trust, or
 - (c) he has failed to discharge his responsibilities as a governor.

4 Election of Governors

- 4.1 A member of one of the constituencies may nominate himself for election as a governor in his constituency and class, and does not require sponsors.

5 Roles and Responsibilities

- 5.1 The statutory duties of the Governors are to:
 - 5.1.1 Hold the Non-Executive Directors, individually and collectively, to account for the Performance of the Board of Directors
 - 5.1.2 Represent the interests of the members of the Trust as a whole and the interests of the public
 - 5.1.3 Appoint and, if appropriate, remove the Chair
 - 5.1.4 Appoint and, if appropriate, remove the other Non-Executive Directors
 - 5.1.5 Decide the remuneration and allowances and other terms and conditions of office of the Chair and other Non-Executive Directors
 - 5.1.6 Approve (or not) any new appointment of a Chief Executive
 - 5.1.7 Appoint and, if appropriate, remove the NHS Foundation Trust's Auditor; and
 - 5.1.8 Receive the Trust's annual accounts, any report of the auditor on them, and the annual report at a meeting of the Council of Governors
 - 5.1.9 Approve a Significant Transaction
 - 5.1.10 Approve an application by the Trust to enter into a merger, acquisition, separation or dissolution
 - 5.1.11 Approve proposals to increase by 5% or more the proportion of the Trust's total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England
 - 5.1.12 Determine whether the level of non-NHS work specified in any financial plan by the Trust would significantly interfere with its principal purpose which is to provide goods and services for the health service in England, or performing its other functions and to notify the Board of Directors of its determination
 - 5.1.13 Approve amendments to the Trust's Constitution.

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- 5.2 Additional Powers
The Council of Governors also has a number of additional functions, as follows:
- 5.2.1 In preparing the Trust's forward plan, the Board of Directors must have regard to the views of the Council of Governors
 - 5.2.2 The Council of Governors may require one or more of the Directors to attend a Governors' meeting to obtain information about performance of the Trust's functions or the Directors' performance of their duties and to help the Council of Governors to decide whether to propose a vote on the Trust's or Directors' performance
 - 5.2.3 The Council of Governors may refer a question to Monitor's new Advisory Panel for Governors as to whether the Trust has failed or is failing to act in accordance with its constitution or the NHS Act 2006
- 5.3 Before each Board meeting, the Board must send a copy of the agenda to the Council of Governors. As soon as practicable after each Board meeting, the Board must send a copy of the minutes to the Council of Governors. The Trust must also take steps to ensure that Governors have the skills and knowledge they require to undertake their role.
- 5.4 Governors may also become involved in other areas not detailed under 2006 Act as amended by the 2012 Act. Detail of how Governors can become involved is noted in the Governor Handbook.
- 6 Appointment of Non-Executive Directors (including Chairman and Deputy Chairman)**
- 6.1 The Council of Governors shall establish a nominations committee of the Council of Governors and the Board of Directors to assist in the process of appointment of non-executive directors (including the Chairman and Deputy Chairman). The committee shall comprise five governors and two directors (at least one of whom will be a non-executive director who is not being considered for re-appointment). The committee may have an independent assessor in attendance if appropriate. The committee shall be chaired by the Chairman except where the Chairman is being considered for re-appointment, when it shall be chaired by another non-executive director who is not standing for appointment as the Chairman.
 - 6.2 The nominations committee shall identify the balance of individual skills, knowledge and experience that is required at the time a vacancy arises and, accordingly, draw up a job description and person profile for each new appointment.
 - 6.3 Suitable candidates shall be identified, after public advertisement, by the nominations committee, which may, if it considers it appropriate in particular circumstances, engage an external organisation, recognised as an expert in this field, to assist it in the whole process.
 - 6.4 On expiry of the initial non-executive directors' current terms of appointment (or a period of 12 months from appointment as a director of this Foundation Trust whichever is the greater) and on any subsequent vacancy, the nominations committee shall consider whether to recommend to the Council of Governors to reappoint the retiring non-executive director, or Chairman, or Deputy Chairman. The nominations committee may not make any such recommendation other than for a first renewal of the appointment of a non-executive director or Chairman without first taking the steps outlined in 6.2 and 6.3 above. If the Council of Governors does not so appoint, or if the individual does not wish to continue, or if the committee does not consider the reappointment appropriate, then suitable new candidates will be identified in accordance with the procedure outlined in 6.2 and 6.3 above.

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7 Remuneration of the Chairman and other Non-Executive Directors

In order to determine the proper level of remuneration and allowances that should be paid to the Chairman and other non-executive directors, the Council of Governors may, from time to time, and at least every three years shall, consult, at the Trust's expense, with external professional advisers recommended by the Trust Secretary and the Director responsible for Workforce.

Annex 7 Council of Governors: Standing Orders

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1 Introduction

1.1 Statutory Framework

Mid Cheshire Hospitals NHS Foundation Trust (the Trust) is a public benefit corporation. It was established, and it functions, in accordance with the provisions of the National Health Service Act 2006.

The purpose of these standing orders is to ensure:

- the regulation of the Trust's Council of Governors' proceedings and business.
- that, along with the Board of Directors and the Trust overall, the Council of Governors achieves the highest standard of corporate governance and conduct.

1.2 Principal Purposes

The Council of Governors is accountable for several key functions within the Trust's corporate governance framework. Further details of those functions are set out in Annex 6 and within the Governor Handbook.

1.3 NHS Codes

Governors must behave in accordance with the seven Nolan Principles of Behaviour in Public Life:

- selflessness,
- integrity
- objectivity,
- accountability,
- openness
- honesty, and
- leadership

Three crucial public service values shall underpin the work of the Trust:

- **Accountability:** Everything done by those who work in or for the Trust must be able to stand the test of parliamentary scrutiny, public judgments on propriety and professional codes of conduct;
- **Probity:** There shall be an absolute standard of honesty in dealing with the assets of the Trust; integrity shall be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of Trust duties;
- **Openness:** There shall be transparency about the Trust's activities to promote confidence between the Trust and its patients, members, staff, and the public.

The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance, which builds on the Combined Code of Corporate Governance.

1.4 Powers

See also **Constitution** and **Board of Directors: Standing Orders** in respect of:

- specified powers to contract in the Trust's own name.
- the conduct of all business in the Trust's own name.
- the Trust's common law duty as a Bailee for patients' property held by the Trust on behalf of patients.
- the holding of all funds received in trust in the name of the Board as corporate trustee, and the exercise of the Board's powers in relation to funds held on trust.
- the Board's accountability to the Charity Commission for those funds deemed to be charitable.

1.5 Delegation of Powers to Committees and/or to Individual Governors

Subject to the powers that the Council of Governors retains for itself, the Council may agree from time to time to the delegation of its duties to committees or working groups that it has formally constituted, and consisting wholly of persons who are governors. To ensure clarity of purpose, the constitution, terms of reference, and specific powers of each committee or working group (and, if necessary, those

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retained by the Council), and other conditions (such as to reporting back to the Council of Governors), shall be laid out in accordance with Trust policy, and approved by the Council. For the avoidance of doubt, such committees or working groups shall be non-executive committees of the Council, and have no remit other than that specifically delegated to them in their terms of reference. Committees and working groups shall not delegate their tasks to further committees or working groups, unless expressly authorised to do so by the Council of Governors.

- 1.6 Committees and working groups established by the Council shall investigate any activity within their terms of reference. In doing so, they may request relevant reports and briefings from Directors and managers; and may request the attendance, with due notice, of any director, clinician or other member of staff at one or more of its meetings. All reasonable requests shall be complied with.
- 1.7 The Council of Governors shall approve the membership to all committees and working groups, and shall determine the governors to chair each committee or working group. Each chairman is to ensure that his committee or working group fulfils the purpose for which the Council has established it. In the absence of the chairman appointed by the Council, a committee or working group may nominate another governor to chair the meeting concerned.
- 1.8 With the agreement of the chairman of the committee or working group, non-governors may attend such committees and working groups, if appropriate under the committee's terms of reference, but they shall have no vote.
- 1.9 A management lead identified by the Chief Executive shall support the chairman of any committee or working group, ensuring that appropriate material is referred to the committee, and that committee actions approved by the Council are carried out. Together, the chairman and lead of each committee or working group shall:
 - schedule all meetings to allow relevant papers to be circulated to the full Council meeting that falls immediately after the committee meeting concerned.
 - produce their minutes and agenda to a standard format for presentation to the committee chairman within one week after the meeting, and for approval and distribution within two weeks.
 - unless otherwise indicated, place a copy of the draft minutes on the Trust's intranet.
 - include routinely on their agenda, discussion of minutes received from any committee that reports to them.
 - maintain a list of senior staff who may receive copies of the papers, but are not full members of the committee or required to attend its meetings.
 - ensure that, if an issue to be considered is known to impact on another committee, the optimum timing is considered to allow transfer of business between committees, so that any necessary recommendations can reach the full Board meeting that falls immediately after the meeting of the committee(s) concerned.
 - at its discretion, by 31 May each year, prepare for the Council an annual report on its work during the year beginning 1 April of the previous calendar year. This will include a report by internal audit or the Trust Secretary to validate the extent to which business plans and action plans have been followed, and to assist the committee in identifying skills gaps.
 - at its discretion, produce a work plan by 1 March each year, for the subsequent year beginning 1 April, for consideration by the Council.
- 1.10 These standing orders, as far as they are applicable, shall apply also, with appropriate alteration, to meetings of any committees and working groups so established by the Council of Governors.
- 1.11 The Council will review the function and value of each committee or working group each year, reviewing its terms of reference as necessary.

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1.12 The Council of Governors may also delegate duties to an individual governor, but only under a clear remit approved by the Council, and subject to such restrictions and conditions as the Council deems fit.

1.13 **Emergency Powers**

The powers which the Council of Governors has retained to itself within these standing orders may in emergency be exercised by the Chairman after having consulted at least five elected governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council for ratification.

1.14 **Derogation of 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 recorded in the minutes and reported to the next meeting of the Council for action or ratification. All governors have a duty to disclose any non-compliance with these standing orders to the Chairman as soon as possible. Serious or deliberate non-compliance by staff will be dealt with through the Trust's disciplinary procedures.

1.15 **Amendment of Standing Orders**

These standing orders shall only be amended in accordance with paragraph 43 of the Constitution.

2 **Interpretation**

2.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of standing orders (on which he should be advised by the Chief Executive, the Director of Finance & Strategic Planning, or the Trust Secretary).

2.2 Any expression to which a meaning is given in the 2006 Act, or in regulations made under the Act shall have the same meaning in such interpretation.

3 **The Council of Governors**

3.1 The powers of the Trust established under statute shall be exercised by the Board of Directors. The Board shall be required to retain full and effective control over the Trust. The Chairman and non-executive directors are responsible for monitoring the executive management of the Trust.

3.2 The Council of Governors may resolve that certain powers and decisions may only be exercised by the Council in formal session.

3.3 For the composition of the Council, see **Constitution: 11**.

3.4 For the process and terms of appointment, including tenure, of the governors, see **Constitution 12, 13 and 14**.

4 **Accountabilities, Duties and Responsibilities**

4.1 The purpose of the Council of Governors' standing orders is to ensure that the highest standards of corporate governance and conduct are applied to all meetings of the Council and its associated deliberations. The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity, based on a recognition that patients come first, is a fundamental value of the Trust. There should be sufficient transparency about the Trust's activities to promote confidence between

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the Trust and its staff, patients and the public. Everything that the Trust does should be able to stand the test of scrutiny, public judgement on propriety, and professional codes of conduct.

- 4.2 The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance which builds on the Combined Code of Corporate Governance. On appointment, the governors, whether elected or appointed, shall be required to subscribe to the Code.
- 4.3 A governor who has acted honestly and in good faith will not have to meet out of his own personal resources any personal civil liability which is incurred in the execution or purported execution of his function as a governor, save where the governor has acted recklessly. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.
- 4.4 The Council of Governors is accountable for several key functions within the Trust's corporate governance framework. Further details of those functions are set out in Annex 6 and within the Governor Handbook.
- 4.5 The Board of Directors has overall responsibility for running the affairs of Trust. Its role is to:
 - take advice from the Council
 - set a strategic direction
 - set organisational and operational targets
 - identify and manage risk
 - assess achievement against the above objectives
 - ensure that action is taken to eliminate or manage, as appropriate, adverse deviations from objectives
 - ensure that the highest standards of Corporate Governance are applied throughout the organisation.
- 4.6 Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below recognises the different roles of the Council of Governors and the Board of Directors as described above.
- 4.7 The Chairman (or Deputy Chairman if the dispute involves the Chairman) shall first endeavour, through discussion with governors and directors or (to achieve the earliest possible conclusion) appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 4.8 Failing resolution under 4.7 above, then the Council of Governors or the Board of Directors, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 4.9 The Trust Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Council of Governors or the Board of Directors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 4.10 The Chairman (or Deputy Chairman if the dispute involves the Chairman) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined above shall be repeated.
- 4.11 If, in the opinion of the Chairman (or Deputy Chairman if the dispute involves the Chairman) and following the further discussions prescribed in 4.10, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of

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the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council of Governors or Board of Directors accordingly.

- 4.12 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 4.13 On the unsatisfactory completion of this disputes process, the view of the Board of Directors shall prevail.
- 4.14 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the terms of its NHS Provider Licence.

5 Role of Chairman

The Chairman is responsible for leading the Council of Governors and the Board of Directors. Full detail on the role of the Chairman can be found in the Corporate Governance Handbook.

6 Appointment of Non-Executive Directors

The Council of Governors appoints non-executive directors to bring independent judgment and critical detachment to bear on issues of strategy, performance, key appointments, and accountability to the local community; and the Council determines their remuneration. See the Constitution and Board of Directors: Standing Orders for the functions of non-executive directors.

7 Meetings of the Council of Governors

- 7.1 **Frequency**
Meetings of the Council of Governors shall be held at least four times each year, at times and places that the Council may determine.
- 7.2 **Chairman of Meeting**
At any meeting of the Council of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting (including absence due to a declared conflict of interest), the Deputy Chairman shall preside. Otherwise, another Non-Executive Director, as requested by the Chairman shall preside.
- Attendance by the Public and Press**
- 7.3 Meetings of the Council of Governors must be open to the public, subject to the provisions below.
- 7.4 The Chairman may exclude any member of public from the whole or part of any meeting of the Council of Governors if:
- he is interfering with, or preventing the reasonable conduct of, the meeting;
 - publicity would be prejudicial to the public interest, by reason of the confidential nature of the business to be transacted in the judgement of the Chairman;
 - there are other special reasons stated in the resolution and/or arising from the nature of the business of the proceedings.
- 7.5 Nothing in these standing orders shall 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.

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7.6 **Attendance by Officers of the Trust**

The Council of Governors may invite individual directors, officers, or members, to attend all or some of its meetings to assist the Council in its deliberations. Such invitees will not contribute to the numbers required for a quorum (as defined in standing order 7.38) and shall not vote on resolutions.

Furthermore, 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.

Calling Meetings

7.7 Notwithstanding 7.1 above, the Chairman may at any time call a meeting of the Council of Governors.

Governors can also request the Chairman call a meeting. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by a majority of the governors, or if without so refusing the Chairman does not call a meeting within fourteen days after requisition to do so, then the governors may forthwith call a meeting provided that:

- they have been requisitioned to do so by more than 50% of governors who shall sign the notice of the meeting; and
- no business is transacted at the meeting other than that specified in the notice.

Notice of Meetings

7.8 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 Chairman, or in his absence by the Trust Secretary, by another officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every governor, or sent by post to the usual place of residence of such governor, in order to be available to him at least five clear days before the meeting. Lack of service of the notice on any governor shall not affect the validity of a meeting subject to paragraph 7.10.

7.9 Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least 50% of governors.

7.10 In the case of a meeting called by governors in default of the Chairman, the notice shall be signed by those governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.

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

Setting the Agenda

7.12 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council, and shall be addressed prior to any other business being conducted. The Council of Governors shall review these topics and their sequence annually.

7.13 A governor desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

Notices of Motions

7.14 A governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the Meeting to the Chairman, who shall insert in the agenda for the meeting. All notices so received are subject to the notice given being

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permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to 7.16 below.

- 7.15 A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 7.16 Notice of a 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 governors who give it and also the signature of four other governors. When any such motion has been disposed of by the Council it shall not be competent for any governor, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he considers it appropriate.
- 7.17 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 7.18 When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
- 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 by a member who has not previously taken part in the debate and who is eligible to vote.
- 7.19 Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed.
- 7.20 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 7.21 No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.
- 7.22 **Chairman's Ruling**
Statements of governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time, and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- Voting**
- 7.23 Subject to the provisions of the Constitution and as otherwise required by law, each question at a meeting shall be determined by a majority of the votes cast on it by the Chairman of the meeting, and by the governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 7.24 All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A majority of governors present may require a vote to be taken by anonymous paper ballot.
- 7.25 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.
- 7.26 If a governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

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- 7.27 In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 7.28 If an equal number of votes are cast for and against the motion, the Chairman of the meeting shall have a second or casting vote.
- 7.29 If a governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

Suspension of Standing Orders

- 7.30 Except where this would contravene any statutory provision, any one or more of these standing orders may be suspended at any meeting, provided that at least two-thirds of members of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 7.31 A decision to suspend standing orders shall be recorded in the minutes of the meeting.
- 7.32 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Chairman and governors and also reviewed by the Audit Committee.
- 7.33 No formal business may be transacted while standing orders are suspended.

Record of Attendance

7.34 The names of the Chairman, governors, and any other person present at the meeting shall be recorded in the minutes, by surname and initials, and by constituency and class, or by professional capacity as applicable.

Minutes

- 7.35 Minutes of the proceedings of each meeting shall be drawn up and the Chairman will ensure that all matters of significance in the meeting are recorded and maintained as a public record. The minutes shall include details of any action to be taken, who will take the specified action, and the dates for its completion where appropriate. The Chairman will also ensure that the draft minutes are promptly circulated to governors, and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding.
- 7.36 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 7.37 The wider circulation of the minutes shall be in accordance with the governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded in accordance with these standing orders.

Quorum

- 7.38 No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of the governors are present, of which half shall be governors from the Public Constituency and the Patients and Carers' Constituency, and at least one governor from the Staff and Volunteers Constituency.
- 7.39 If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest 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

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shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

7.40 **Conduct of the Meeting**

The Chairman of the Meeting will ensure that adequate time is afforded for the proper consideration of each item on the agenda. Contributions by governors, and other persons invited to speak, shall be relevant to the matter under discussion and the decision of the Chairman of the Meeting on questions of order, relevancy and any other matter concerning the conduct of the Meeting shall be observed.

Confidentiality

7.41 If the Council, at Council of Governors meeting at which the public are excluded, or one of its committees resolves that a matter is confidential, a governor, a committee member or any other non-governor in attendance at any of its meetings shall not disclose that matter, even if it has been reported to the Council; or otherwise dealt with by, or brought before, the Council or committee, even if any associated action has been concluded, subject to any legal duties/requirements to disclose.

8 Compliance: Other Matters

Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance & Strategic Planning and approved by the Board of Directors.

9 Council of Governors Performance

The Chairman shall, at least annually, lead a performance assessment process for the Council of Governors to enable the Council to review its roles, structure, composition and procedures taking into account emerging best practice.

10 Declaration of Governors' Interests

10.1 Governors are required to comply with the Trust's standards of business conduct and to declare to the Council any interests required to be declared by the Constitution or any other interests they have or that their family might have which are relevant and material. Governors shall declare to the Council their interests and the interests of their family which are relevant and material on appointment or as soon as practical as such interests are acquired subsequent to appointment. At the time governors' interests are declared, they will be recorded in the Council minutes. Any changes in interests shall be declared at the next Council meeting following the change occurring.

10.2 Interests regarded as relevant and material are:

- Directorships, including non-executive directorships held in private companies or Public limited companies (with the exception of those of dormant companies).
- Ownership of, part-ownership of, or employment with private companies businesses or consultancies likely or possibly seeking to do business with the NHS.
- Employment with any private company, business or consultancy.
- Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.
- A position of authority in a charity or voluntary organisation in the field of health and social care.
- Any connection with a voluntary or other organisation contracting for NHS services.

10.3 If a governor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

10.4 At the time governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a register of interests of governors to be

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maintained by the Trust Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.

- 10.5 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information shall be kept up to date for inclusion in succeeding Annual Reports.
- 10.6 During the course of a Council of Governors meeting, if a conflict of interest is established, the governor concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, the Council of Governors shall exclude the governor from any meeting of the Council while any matter in which he has a pecuniary interest is under discussion.

Register of Interests

- 10.7 The Trust Secretary will ensure that a register of interests is established to record formally declarations of interests of governors.
- 10.8 Details of the register will be kept up to date and reviewed annually.
- 10.9 The register will be available to the public.
- 10.10 Interests that are regarded as "relevant and material" are set out in 10.2 above.
- 10.11 Any allowances payable to the governor by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this standing order.
- 10.12 For the purpose of this standing order, and subject to other standing orders, the governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- he, or a nominee, 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
 - 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; or
 - the interest is regarded as "relevant and material" in accordance with standing order 10.2 above.
- The interests of the governor shall include members of his family as defined above..
- 10.13 The Chairman or governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of an interest in any company, body or person with which he is connected as mentioned in standing order 10.2 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Chairman or governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 10.14 Where the Chairman 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 £10,000 or one-hundredth of the total nominal value of the issued share capital of the company or other body, whichever is the 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 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 duty to disclose his interest.

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- 10.15 The provisions of this standing order apply to members of a committee, sub-committee or joint committee as they apply to the Chairman and governors.
- 10.16 Governors shall discuss any personal doubt about the relevance of an interest with the Chairman, who shall take account of current guidance. The Accounting Standards Board's *Financial Reporting Standard No 8* specifies that, in assessing the relevance of an interest, influence is more important than the immediacy of the relationship.
- 10.17 The Trust Secretary will ensure the maintenance of register of interests in which declarations of interests of directors are formally recorded.
- 10.18 These details will be kept up to date by means of an annual review of the register, in which any changes to interests declared during the preceding twelve months will be incorporated.
- 10.19 The register shall be available to the public, and the Trust Secretary will take reasonable steps to bring to public attention the existence of the register and arrangements for viewing it.

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Annex 8 Board of Directors Standing Orders:

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1 Introduction

1.1 Statutory Framework

Mid Cheshire Hospitals NHS Foundation Trust (the Trust) is a public benefit corporation. It was established, and it functions, in accordance with the provisions of the National Health Service Act 2006 (hereafter referred to as the 2006 Act).

The purpose of these standing orders is to ensure:

- the regulation of the Trust's Board of Directors' proceedings and business.
- that, along with the Council of Governors and the Trust overall, the Board achieves the highest standard of corporate governance and conduct.

1.2 Principal Purposes

The Board of Directors has overall responsibility for running the affairs of the Trust. Its role is to:

- ensure compliance with the Constitution and the Provider Licence
- take advice from the Council of Governors
- set a strategic direction
- set organisational and operational targets
- minimise risk
- assess achievement against the above objectives
- ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives
- ensure that the highest standards of Corporate Governance are applied throughout the organisation. The Board shall at all times seek to comply with the NHS Foundation Trust Code of Governance which builds on the Combined Code of Corporate Governance
- have regard to the NHS Constitution in performing the Trust's NHS functions

1.3 NHS Codes

Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life:

- selflessness,
- integrity,
- objectivity,
- accountability,
- openness,
- honesty and
- leadership

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1.4 Documents Incorporated into Standing Orders

The Board shall approve, and from time to time revise, Schedules to the standing orders of the Board of Directors, which shall have effect as if incorporated into standing orders:

- The Standing Financial Instructions;
- The Standing Financial Instructions for Non-Financial Risk;
- The Reservation of Powers to the Board of Directors;
- The Delegation of Powers from the Board of Directors;
- The Fraud Policy and Response Plan
- The Bribery Act 2011

New or revised Financial Codes of Procedures shall have effect as if incorporated into standing orders by virtue of the Director of Finance & Strategic Planning issuing them and reporting their issue to the Board through the Audit Committee.

1.5 Powers

The Board of Directors shall exercise the powers of the Trust established under statute, in accordance with the terms of its NHS Provider Licence and its Constitution. The Board shall be required to retain full and effective control over the Trust. The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in Reservation of Powers to the Board, and Delegation of Powers from the Board, and have effect as if incorporated into these standing orders.

As a statutory body, the Trust has specified powers to contract in its own name, and all business shall be conducted in the name of the Trust. See also **Constitution: 3**.

The Chairman and non-executive directors are responsible for monitoring the executive management of the Trust.

The Trust also has a common law duty as a Bailee for patients' property held by the Trust on behalf of patients. All such funds received in trust shall be held in the name of the Board as corporate trustee.

In relation to funds held on trust, powers exercised by the Board as corporate trustee shall be exercised separately and distinctly from those powers exercised as a NHS Trust. The Board of Directors shall be accountable to the Charity Commission.

1.6 Delegation of Powers

Save as set out in this Constitution and as otherwise permitted by law, the Board has powers to delegate, and to make arrangements for delegation. The standing orders set out the detail of these arrangements. Under standing order 5, the Board has 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 6 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit. The Board shall approve, and shall annually review, Schedules concerning Reservation of Powers to the Board of Directors, and Delegation of Powers by the Board of Directors, which shall have effect as if incorporated into these standing orders

Save as stipulated in **Constitution: 25** (Appointment of Non-Executive Directors) and as otherwise required by the Constitution and permitted by law, the Board shall from time to time agree the delegation of executive powers to be exercised by committees or sub-committees that it has formally constituted. The Board shall approve the constitution and terms of reference of these committees, or sub-committees, and their specific executive powers

Those functions of the Trust which have not been retained as reserved by the Board, or delegated to one of its committees, shall be exercised on behalf of the Board by

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the Chief Executive. He shall determine which functions he will perform personally, and shall nominate officers to undertake remaining functions but still retain accountability for these to the Board.

1.7 **Emergency Powers**

The powers which the Board resolves to retain to itself may in emergency be exercised by the Chief Executive and the Chairman provided that they first consult at least two non-executive directors, and subsequently report the exercise of such powers to the next formal meeting of the Board for ratification.

1.8 **Derogation from 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 recorded in the minutes and reported to the next meeting of the Board of Directors (through its Audit Committee) for action or ratification.

All directors have a duty to disclose any non-compliance with these standing orders to the Chairman as soon as possible. Serious or deliberate non-compliance by staff will be dealt with through the Trust's disciplinary procedures.

1.9 **Amendment of Standing Orders**

The Audit Committee shall review standing orders at least every three years, and make any recommendations for change to the Board. This review shall include all documents having the effect as if incorporated in standing orders, including those reviewed annually. These standing orders shall only be amended in accordance with paragraph 43 of the Constitution.

2 **Interpretation**

2.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of standing orders, on which he should be advised by the Chief Executive, the Director of Finance & Strategic Planning, or the Trust Secretary.

2.2 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act.

3 **The Board**

3.1 **Composition of the Board**

See **Constitution: 22**

3.2 **Appointment, Tenure and Resignation of the Non-Executive Chairman and Deputy Chairman, and Non-Executive Directors**

The Chairman and non-executive directors are appointed and removed by the Council of Governors. Any non-executive director may at any time resign by giving notice in writing to the Chairman.

3.3 **Eligibility and Appraisal of the Non-Executive Chairman and Non-Executive Directors**

The Board shall approve a formal process to enable it to assess and declare (or otherwise) the independent status of each non-executive director. The process shall apply to all proposed new appointees, and annually thereafter to those appointed. The Chief Executive and Chairman of the Audit Committee shall review the declarations and shall report the outcome to the Board. The Constitution requires the Chairman of the Audit Committee to be a non-executive director, and his declaration shall be reviewed, and the outcome reported to the Board, by the Chairman and the

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Chief Executive. The Board shall then determine the status of each non-executive director.

The Board shall appoint one of the non-executive directors, not being the Chairman, as the Senior Independent Director in consultation with the Council of Governors.

The Board's Appointments and Remuneration Committee shall meet to appraise the Chairman's performance at least annually, and on such other occasions as the Board deems to be appropriate, with or without the Chairman present, and led by the Senior Independent Director. The committee shall prepare a written appraisal and circulate it in confidence to all non-executive directors including the Chairman, and to governors. If appropriate, and with the approval of the majority of non-executive directors, the Senior Independent Non-Executive Director shall make recommendations to the Chairman, or he shall appraise the Chief Executive of the committee's report and together they may make recommendations to the Chairman. Exceptionally the Senior Independent Director may, with the approval of the committee, disclose the committee's recommendations to the Board sitting in private session.

3.4 Appointment and Powers of Deputy Chairman

Where the Chairman of the Trust has died, or has ceased to hold office, or been unable to perform his duties as Chairman owing to illness or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed, or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these standing orders shall, as long as there is no Chairman able to perform his duties, be taken to include references to the Deputy Chairman.

3.5 Appointment of Chief Executive

Collectively, the Chairman and non-executive directors of the Trust shall comprise the Appointments and Remuneration Committee. In accordance with **Constitution: 27**, the Appointments and Remuneration Committee shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors), determine his remuneration and terms of employment, and if necessary terminate his employment. His appointment shall be subject to the approval of the Council of Governors. If the post of Chief Executive is unfilled for any reason, the Appointments and Remuneration Committee may make such appointments as it deems appropriate within its terms of reference.

- 3.6 Non-executive directors may, at the Trust's expense, seek external advice, or appoint an external adviser, on any material matter of concern provided that the decision to do so is a collective one by the majority of non-executive directors. In doing so, they will normally seek the advice of the relevant executive director or the Trust Secretary.

3.7 Appointment of Executive Directors

The Board shall appoint a committee of the Chairman, the Chief Executive and the non-executive directors to appoint or remove executive directors; and an Appointments and Remuneration Committee comprising the Chairman and non-executive directors to determine the remuneration and allowances and other terms and conditions of office of the executive directors.

3.8 Jointly-Held Executive Director Appointments

Where more than one person is appointed jointly to a post, then those persons may, with the approval of the Board, be appointed as an executive director jointly, and shall count as one person.

3.9 Attendees at Board Meetings

The Board may resolve that certain officers, members, or elected or appointed governors of the Trust may be invited to attend all or some of the meetings of the Board to assist the Board in its deliberations. Such invitees will not contribute to the numbers required for a quorum (as defined in standing order 4 below), and shall not

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vote on resolutions. Such invitees shall be required to undertake to comply with standing orders if they are not officers of the Trust.

3.10 Trust Secretary

The Board shall appoint a Trust Secretary who, under the direction of the Chairman and the Chief Executive, and reporting to the Chief Executive, shall ensure full and effective information flows within the Board of Directors, and between the Board of Directors and the Council of Governors, and their committees; between directors and governors, and between senior management and non-executive directors. The Trust Secretary shall also advise the Board and Council on all governance matters, and shall facilitate induction and professional development as required for members of the Board of Directors and Council of Governors.

3.11 Directors' Liability

On appointment, the Chairman, non-executive directors and executive directors shall be required to subscribe to the NHS Foundation Trust Code of Governance and Board Code of Conduct.

A director or officer of the Trust who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution, or purported execution, of his or her function as a director save where the director has acted recklessly. On behalf of the directors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

4 Board Meetings

Admission of Members, the Public and the Press

4.1 Board of Director meetings shall be held in public. Members of the public may be excluded from a meeting for special reasons. A non-exhaustive list of such special reasons will be held by the Trust Secretary.

4.2 Nothing in these standing orders shall 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 Board.

Calling Meetings

4.3 The Board of Directors will meet at a frequency (but not less than quarterly), and at a time, date and place that it shall decide.

4.4 Notwithstanding the requirement in 4.6 below for notice, the Chairman may waive notice on written receipt of the agreement of at least two-thirds of directors (non-executive and executive directors taken together) but to include a minimum of two executive directors and two non-executive directors.

4.5 The Chairman may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of directors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within seven days after such a requisition has been presented to him, at the Trust's head office, such one third or more directors may forthwith call a meeting. In the case of a meeting called by directors in default of the Chairman, the notice shall be signed by those directors, and no business shall be transacted at the meeting other than that specified in the notice.

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Notice of Meetings

- 4.6 Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and attaching relevant papers, shall be sent to each director seven consecutive calendar days before the meeting. In exceptional circumstances, the Chairman may agree to unavoidably late papers to be sent after this deadline.
- 4.7 Failure to serve such a notice on more than three directors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 4.8 Before each meeting takes place, notice of the meeting, including specification of the business proposed to be transacted at it will be made available to the Council of Governors and (on request) to any member of the public. Notice will also be given on the Trust's website.

Setting the Agenda

- 4.9 On an annual basis, the Board shall determine regular agenda items, and their frequency.
- 4.10 In considering the agenda, the Board and the Chairman shall balance:
- reporting and analysing past performance;
 - examining the critical levers which will influence the future;
 - operational issues, properly the function of the executive directors;
 - strategic issues, deriving from the Board Assurance Framework and the Board's objectives, that will impact on performance;
 - local interest, as represented by the Council of Governors;
 - the interests of the wider population of NHS users.
- 4.11 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board, and shall be addressed prior to any other business being conducted.
- 4.12 A director desiring a matter to be included on an agenda shall make his request to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

Chairman of Meetings

At any meeting of the Board, the Chairman, if present, shall preside. If the Chairman is absent from the meeting (including absence due to a declared conflict of interest), the Deputy Chairman, if there is one and he is present, shall preside. If the Chairman and Deputy Chairman are absent, a non-executive director, as the directors present shall choose, shall preside.

Notices of Motion

- 4.14 A director desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting without notice on any business mentioned on the agenda.
- 4.15 Notice of a 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 directors who gives it and also the signature of four other directors. When any such motion has been disposed of by the Board, it shall not be competent for any director, other than the Chairman, to propose a motion to the same effect within six months; however, the Chairman may do so if he considers it appropriate.

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4.16 **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 Chairman.

Motions

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

4.18 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:

- 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 by a director who has not previously taken part in the debate and who is eligible to vote.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed.

4.19 No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

4.20 **Conduct of the meeting and Chairman's Ruling**

The Chairman of the meeting will ensure that adequate time is afforded for the proper consideration of each item on the agenda. Contributions by directors, and other persons invited to attend, shall be relevant to the matter under discussion and the decision of the Chairman of the meeting on questions of order, relevancy and any other matter concerning the conduct of the Meeting shall be final.

4.21 **Voting**

Each question at a meeting shall be determined by a majority of the votes cast on it by the Chairman of the meeting, and by other directors present. At his discretion, the Chairman of the meeting may determine such questions either by oral expression or by show of hands. A majority of directors present may require a vote to be taken by anonymous paper ballot.

4.22 If an equal number of votes are cast for and against the motion, the Chairman of the meeting shall have a second or casting vote.

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

4.24 If a director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

4.25 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote. Attendance may be permitted by telephone or video media link, if available, at the discretion of the Chairman

4.26 An officer who has been appointed formally by the Board to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the

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voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.

Minutes

4.27 The Chairman shall ensure that the minutes of the proceedings of a meeting are drawn up under the supervision of the Trust Secretary, and maintained as a permanent record. The minutes shall record all matters of significance, with details of any action to be taken, who will take the specified action, and the dates for its completion where appropriate.

4.28 The Trust Secretary shall ensure that a draft of the minutes, endorsed by the Chairman (or the person who presided at the meeting of which they are a record) are promptly circulated to directors, and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding. No discussion shall take place upon the minutes except upon their accuracy, or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be recorded and agreed at the next meeting.

4.29 Minutes shall be circulated to each Governor as soon as is practicable after the meeting, and may be further circulated in accordance with directors' wishes. Where providing a record of a public meeting, the minutes shall be made available to the public.

4.30 Joint Members

Where the office of an executive director is shared jointly by more than one person:

- either or both of those persons may attend or take part in meetings of the Board;
- if both are present at a meeting, they should cast one vote if they agree;
- if they disagree, no vote should be cast;
- the presence of either or both of those persons should count as the presence of one person for the purposes of standing order 4.38.

4.31 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, provided that at least two-thirds of the Board are present, including one non-executive and one executive director, and that a majority of those present vote in favour of suspension.

4.32 A decision to suspend standing orders shall be recorded in the minutes of the meeting.

4.33 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Chairman and directors.

4.34 No formal business may be transacted while standing orders are suspended.

4.35 The Audit Committee of the Trust shall review every decision to suspend standing orders.

4.36 Variation and Amendment of Standing Orders

These standing orders shall be amended only in accordance with the **Constitution 43**, and in consultation with the Council of Governors.

4.37 Record of Attendance

The names of the Chairman, directors, and any person invited by the Chairman to attend shall be recorded in the minutes by surname and initials, and by post, function or representative capacity.

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Quorum

- 4.38 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and directors, including at least one non-executive director and one executive director are present.
- 4.39 An officer in attendance for an executive director, but without formal acting up status approved by the Appointments and Remuneration Committee, may not count towards the quorum.
- 4.40 If the Chairman or a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum.
- 4.41 If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the Minutes of the meeting. The meeting must then proceed to the next business.

5 Arrangements for the Exercise of Functions by Delegation

- 5.1 The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of these Standing Orders, or by a director or an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2 In delegating a function to a third party, the Board will ensure effective governance procedures are in place eg committees, sub committees, or officers.
- 5.3 **Delegation to Committees**
Subject to the powers that the Board retains for itself, the Board may determine from time to time to delegate certain of its responsibilities to be exercised by committees, or sub-committees, or joint-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific powers (and, if necessary, those retained by the Board) shall be approved by the Board.
- 5.4 **Delegation to Officers**
Those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee or sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive, subject to approval by the Board, shall determine which functions he will perform personally, and shall determine a management structure and nominate officers to undertake the remaining functions for which he will still retain an accountability to the Board.
- 5.5 The Chief Executive shall prepare a Scheme of Delegation to Officers for consideration and approval by the Board. The Chief Executive may periodically propose amendments to the Scheme of Delegation for consideration and approval by the Board.
- 5.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance & Strategic Planning to provide information and advise the Board in accordance with statutory requirements. Outside these statutory requirements, the Director of Finance & Strategic Planning shall be accountable to the Chief Executive for operational matters.
- 5.7 The arrangements made by the Board as set out in the Reservation of Powers to the Board and Delegation of Powers (to Officers) document shall have effect as if incorporated in these standing orders.

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- 5.8 The Trust Secretary shall maintain a current management structure approved by the Board.
- 5.9 **Non-Compliance with 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 recorded in the minutes and:
- for standing orders 2, 3, and 4 above, reported to the next formal meeting of the Board for action or ratification, and
 - for all other paragraphs of these standing orders to the next meeting of the Board committee responsible for audit, for its consideration and referral to the Board.
- 5.10 All members of the Board and staff have a duty to disclose any non-compliance with these standing orders to the Chief Executive as soon as possible. Serious or deliberate non-compliance by staff will be dealt with through the Trust's disciplinary procedures.

6 Committees and Convenors

6.1 Appointment of Committees

Subject to the provisions of the Constitution, these standing orders and any other legal requirements, the Board shall appoint committees of the Trust, consisting wholly or partly of directors of the Trust, or wholly of persons who are not directors of the Trust, and reporting to the Board through the committee chairman.

- 6.2 The Board shall approve the appointment of committee chairmen, on the Chairman's recommendation.
- 6.3 Standing orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Trust.
- 6.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (including reporting back to the Board), as the Board shall decide and shall be in accordance with any legislation and regulation. After taking advice from each committee, the Board shall review the terms of reference of each committee annually, and those terms of reference, as reviewed and revised periodically, shall have effect as if incorporated into standing orders.

The Board may make, vary and revoke standing orders relating to the quorum, proceedings and place of meeting of a committee or sub-committee but otherwise the committee or sub-committee may determine these matters as it thinks fit.

The committee shall be empowered to establish the necessary infrastructure, to enable the committee to undertake their required responsibilities

- 6.5 Committees of the Board may establish subcommittees. In doing so, they:
- may not delegate executive powers to the sub-committee unless the Board has expressly authorised them to do so;
 - must determine the membership and terms of reference of such subcommittees;
 - must require sight of the minutes of each subcommittee meeting at their own meetings.
- 6.6 The Board may agree to the establishment of joint committees with the Council of Governors, and with other organisations, and appoint directors and staff as may be appropriate to such joint committees.
- 6.7 Committees, subcommittees and joint committees have no powers to commit expenditure by the Trust, except where budgets have been specifically delegated by the Board.

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6.8 Confidentiality

If the Board or a committee resolves that a matter is confidential, a director or a member of the Board or that committee shall not disclose that matter, even if it has been reported to the Board, or otherwise dealt with by, or brought before, the committee, even if any associated action has been concluded, subject to any legal duties/requirements to disclose.

7 Incorporation of Standing Orders into Employment Contracts

7.1 The Chairman (for non-executive directors) and Chief Executive (for executive directors, managers, consultant medical staff and officers having delegated authority defined by the Delegation of Powers to Officers) shall ensure that these standing orders are incorporated into contracts of employment, and are brought to the attention of all such persons on appointment or when revised, and through the Trust's Intranet.

7.2 The Chief Executive shall ensure that appropriate training is put into place to reinforce these standing orders.

8 Declaration of Interest

8.1 Interests of Directors

Directors shall declare to the Board their interests and the interests of their family which are relevant and material on appointment or as soon as practical as such interests are acquired subsequent to appointment.

8.2 Interests which are regarded as "relevant and material" are:

- o Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
- o Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- o Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- o Employment with any private company, business or consultancy.
- o A position of trust in a charity or voluntary organisation in the field of health and social care;
- o Any connection with a voluntary or other organisation contracting for NHS services.

"Family" shall mean spouse, partner, children, grandchildren, other dependents, parents and grandparents. There is no requirement for the interests of directors' spouses or partners to be declared. However the Membership and Procedure Regulations require that the interests in contracts of directors' spouses, if living together, should be declared.

8.3 Any changes in interests shall be declared at the next Board meeting following the change occurring. At the time that directors declare an interest, it will be recorded in the Board minutes.

8.4 Directors' directorships of companies likely or possibly seeking to do business with the NHS shall be published in the Board's Annual Report. The information shall be kept up to date for inclusion in succeeding annual reports.

8.5 During the course of a Board meeting, if a conflict of interest is established, if the Chairman or a director concerned shall disclose the fact and withdraw from the meeting and play no part in the relevant discussion or decision.

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If the Chairman or a director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter, and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he or she 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. For the avoidance of doubt, the Board shall exclude the director from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

The Board of Directors, as it may think fit, may remove any disability imposed by this standing order in any case in which it appears to the Board that, in the interests of the National Health Service, the disability shall be removed. Such action shall have the support of at least two-thirds of the directors (including two executive and two non-executive directors).

- 8.6 Any remuneration, compensation or allowances payable to the director by virtue of the Act shall not be treated as a pecuniary interest for the purpose of this standing order.
- 8.7 For the purpose of this standing order, and subject to other standing orders, the director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- he, or a nominee, 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
 - 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; or
 - the interest is regarded as “relevant and material” in accordance with standing order 8.2 above.

The interests of the director shall include members of his family as defined in standing order 8.2

- 8.8 The Chairman or a director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
 - (b) of an interest in any company, body or person with which he is connected as mentioned above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Chairman or a director in the consideration or discussion of, or in voting on, any question with respect to that contract or matter.
- 8.9 Where the Chairman or a director:
- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - (b) the total nominal value of those securities does not exceed £10,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this standing order shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.

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- 8.10 The above provisions apply to member of a committee, sub-committee or joint committee as they apply to the Chairman and directors.
- 8.11 Directors shall discuss any personal doubt about the relevance of an interest with the Chairman, who shall take account of current guidance. The Accounting Standards Board's *Financial Reporting Standard No 8* specifies that, in assessing the relevance of an interest, influence is more important than the immediacy of the relationship.
- 8.12 The Chief Executive will ensure that a register of interests is established, and maintained by the Trust Secretary to record formally declarations of interests of directors. In particular, the register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-executive directors.
- 8.13 These details will be kept up to date by means of an annual review of the register, in which any changes to interests declared during the preceding twelve months will be incorporated.
- 8.14 The register shall be available to the public, and the Trust Secretary will take reasonable steps to bring to local public attention the existence of the register and arrangements for viewing it.

9 Custody of Seal and Sealing of Documents

9.1 Custody of Seal

The common seal of the Trust shall be kept by the Trust Secretary in a secure place and shall be secured by two separate locks.

Sealing of Documents

- 9.2 The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board. In exceptional circumstances the Chairman and the Trust Secretary may affix the Seal to any document provided that all such instances are reported to the next meeting of the Board.

9.3 Register of Sealing

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

10 Signature of Documents

- 10.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Director of Finance & Strategic Planning when the proceedings are to recover debts due to the Trust and by the Chief Executive in all other circumstances, unless any enactment otherwise requires or authorises or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 10.2 All written contracts shall be signed by the Chief Executive and Director of Finance & Strategic Planning jointly subject to approvals contained in these standing orders.

Annex 9 Further Provisions in Relation to Members

Contents

- 1 Disqualification from Membership
- 2 Termination of Membership
- 3 Expulsion
- 4 Voting at Elections for governors by the Public Constituency and/or the Patients and Carers' Constituency
- 5 Members Meetings

1 Disqualification from Membership

- 1.1 A person may not become a Member of the Trust if within the last five years he has received a sanction under any policy or procedure approved by the Board of Directors for the care of patients who are violent or abusive, or if he has been involved in a serious incident of violence at any of the Trust's hospitals or facilities, or against any of the Trust's staff, or registered volunteers.
- 1.2 A person may not become a member of the Trust unless he is age 16 or above.
- 1.3 A person may not become or remain a member of the Public Constituency, or of the Patients and Carers' Constituency, if he is eligible to become a member of the Staff and Volunteers Constituency.
- 1.4 A person may not be a member of more than one constituency, or of more than one class in any constituency.
- 1.5 Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, it shall give the member 14 days written notice to show cause why his name should not be removed from the register of members. On receipt of any such information supplied by the member, the Trust Secretary may, if he considers it appropriate, remove the member from the register of members. In the event of any dispute the Trust Secretary shall refer the matter to the Council of Governors to determine. All members of the Trust shall be under a duty to notify the Trust Secretary of any change in their particulars which may affect their entitlement as a member.

2 Termination of Membership

A member shall cease to be a member if:

- 2.1 he resigns on notice to the Trust Secretary;
- 2.2 he ceases to be entitled under this Constitution to be a member of his respective Constituency;
- 2.3 he is expelled under this Constitution.
- 2.4 if it appears to the Trust Secretary that he no longer wishes to be a member and, after enquiries made in accordance with a process approved by the Council of Governors, he fails to confirm that he wishes to continue to be a member of the Trust.

3 Expulsion

A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted:

- 3.1 Any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust.

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- 3.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
- (a) dismiss the complaint and take no further action; or
 - (b) arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
- 3.3 If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 3.4 At the meeting, the Council of Governors will consider any oral and written evidence produced in support of the complaint and any oral and written evidence submitted for or on behalf of the member about whom complaint has been made.
- 3.5 If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence. A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 3.6 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

4 Voting at Elections for Governors by the Public Constituency and/or the Patients and Carers' Constituency

- 4.1 A person may not vote at an election for an elected governor in the Public Constituency, or in the Patients and Carers' Constituency, unless within the specified period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the constituency for which the election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

5 Members Meetings

- 5.1 The Trust is to hold a members' meeting (called the Annual Members' Meeting) within nine months of the end of each financial year. Additional members' meetings may be held as and when considered necessary.
- 5.2 Members' meetings are open to all members of the Trust, governors and directors, and representatives of the financial auditor, and to members of the public. The Council of Governors may invite representatives of the media, and any experts or advisors whose attendance they consider to be in the best interests of the Trust, to attend a Members meeting.
- 5.3 All members' meetings are to be convened by the Trust Secretary by order of the Council of Governors.
- 5.4 The Council of Governors may decide whether a Members' meeting is to be held, and may also for the benefit of members arrange for the Annual Members' Meeting to be held in a different venue each year.
- 5.5 At the Annual Members' Meeting:
- 5.5.1 the Board of Directors shall present to the members:
 - the annual accounts
 - any report of the financial auditor
 - any report of any other external auditor of the Trust's affairs
 - forward planning information for the next financial year.
 - 5.5.2 the Council of Governors shall present to the members:
 - the progress of the Membership Strategy
 - any proposed changes to the policy for the composition of the Council of Governors and of the non-executive directors

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- the results of any election, or appointment, to the Council of Governors; and the appointment of any non-executive director.
- 5.6 Notice of a members meeting is to be given:
- by notice prominently displayed at the Trust's head office; and
 - by notice on the Trust's website
 - by advertisement in the local press
 - by notices in public places as appropriate
 - at least fourteen clear days before the date of the meeting.
- 5.7 The notice must:
- be given to the Council of Governors and to the Board of Directors, and to the financial auditor;
 - state whether the meeting is an Annual Members Meeting;
 - give the time, date and place of the meeting; and
 - indicate the business to be dealt with at the meeting.
- 5.8 Before a members' meeting can undertake business, there must be a quorum present. Except where this Constitution says otherwise, a quorum is one member present from each of the Trust's Constituencies. In the case of the Annual Members Meeting, a quorum shall be one member present from each of the Trust's Constituencies, one governor elected from each of the Trust's Constituencies, one appointed governor, one executive director, the Chairman (or, in his absence, the Deputy Chairman, or, in his absence, a non-executive director appointed by the Council of Governors to fulfil the role of Chairman) and one other non-executive director.
- 5.9 The Trust may make arrangements for members to vote by post, or by using electronic communications.
- 5.10 It is the responsibility of the Chairman of the meeting to ensure that at any members meeting:
- the issues to be decided are clearly explained;
 - sufficient information is provided to members to enable rational discussion to take place.
- 5.11 The Chairman of the Trust, or in his absence the Deputy Chairman, or in their absence one of the non-executive directors shall act as Chairman at all members meetings of the Trust.
- 5.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 5.13 A resolution put to the vote at a members meeting shall be decided upon by a poll.

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- 5.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes, the Chairman of the meeting is to have a second or casting vote.
- 5.15 The result of any vote will be declared by the Chairman, and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

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Annex 10

Glossary of Terms

The list of definitions, below, apply to the Constitution of Mid Cheshire Hospitals NHS Foundation Trust and the attaching Annexes

Accounting Officer means the **Chief Executive** of the **Trust**, who is responsible for ensuring the proper stewardship of public funds and assets.

Act means the National Health Service Act 2006.

Board or **Board of Directors** means the collective body formally constituted in accordance with the Constitution and comprising the Non-Executive **Chairman**, the **Non-Executive Directors**, and the **Executive Directors**.

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

Budget Holder means the **Director** or a member of staff with delegated authority to manage finances (income and expenditure) for a specific area of the Trust.

Chairman means the person appointed by the **Council of Governors** to lead the Council and the **Board of Directors**, and to ensure that the Board successfully discharges its overall responsibility for the **Trust** as a whole. The **Deputy Chairman** shall be deemed to include the Non-Executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

Chief Executive means the chief executive officer of the **Trust**, whose appointment is made by the **non-executive directors** and approved by the **Council of Governors**.

Class means a subdivision of a **Constituency**.

Commercial Sponsorship means **Trust** funding from an external source, including funding of all or part of the costs of a member of staff, NHS research, staff training, pharmaceuticals, equipment, meeting rooms, costs associated with meetings, meals, gifts, hospitality, hotel and transport costs (including trips abroad), provision of free services (including speakers), buildings or premises.

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

Committee of the Board of Directors means a committee appointed by the **Board of Directors** with specific terms of reference, chairman, and membership approved by the Board.

Committee of the Council of Governors means a committee appointed by the **Council of Governors** with specific terms of reference, chairman, and membership approved by the Council.

Committee members mean persons formally appointed to sit on, or to chair specific committees; or persons co-opted as members of any specific committee.

Constituency means either one of the Public constituencies, the Staff and Volunteers constituency or Patients and Carers constituency as the context requires and "constituencies" means two or more of them together.

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

Council of Governors means the body formally constituted in accordance with the Constitution, meeting in public (other than exceptionally) and presided over by the **Chairman**.

Deputy Chairman means the **Non-Executive Director** appointed by the **Council of Governors** to take on the Chairman's duties if the **Chairman** is absent for any reason.

Director means the **Chairman**, a **Non-Executive Director** or an **Executive Director** appointed in accordance with the Constitution.

Director of Finance & Strategic Planning means the chief financial officer of the **Trust**.

Effective Date means the date on which these **Standing Orders** came into effect.

Emergency shall comprise those events that put the **Trust**, its staff or patients at significant risk and their immediate actions shall be required to effectively control that risk without delay until the next scheduled **Board** meeting.

Executive Director means a member of the Board who is appointed by the **Non-Executive Directors** and the **Chief Executive** (other than for the appointment of a Chief Executive) as an **officer** of the Trust.

EU means the European Union.

Family means the spouse, partner, children, grandchildren, other dependants, parents or grandparents of any **Governor**, **Director**, or **Officer** of the **Trust**.

Funds Held on Trust means those funds which the Trust held on the date of incorporation, received on distribution by statutory instrument or which it has chosen subsequently to accept under powers defined by legislation. Such funds may or may not be charitable.

Governor means a person elected or appointed to the **Council of Governors** in accordance with the Constitution.

Legal Adviser means a properly qualified person appointed by the **Trust** to provide legal advice.

Manager means any member of staff of the Trust, or other person on contract to the Trust, who shall exercise management control and/or direction over other staff either on a continuous basis or for a period of time (for instance, during a clinical procedure). This includes staff at all levels and disciplines who supervise other clinical staff.

Member means a person registered as a member of a Constituency of the **Trust** in accordance with the Constitution.

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

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

NAO means National Audit Office.

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

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Non-Executive Director means a person appointed to the **Board of Directors** by the **Council of Governors**, who is not an officer of the **Trust** and is not to be treated as an officer.

Officer means a member of staff of the Trust or any other person holding a paid appointment or office with the **Trust**.

SFI means **Standing Financial Instructions**.

Staff shall include those persons employed by the Trust and those on contract from third party organisations whose duties and responsibilities require them to act as if they were staff. For avoidance of doubt, it does not include persons employed by a contractor where the contractor supervises the persons on a day to day basis.

Standing Orders mean the document regulating the proceedings of the Trust's **Board of Directors** or its **Council of Governors**.

Trust means Mid Cheshire Hospitals NHS Foundation Trust.

Trust Secretary means a person who may be appointed by the **Board** to provide advice on corporate governance issues to the **Board** and the **Chairman** and monitor the Trust's compliance with **Standing Orders**, legislation, and related guidance.