

**CONSTITUTION OF POOLE HOSPITAL**

**NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

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# CONSTITUTION

## INTERPRETATIONS AND DEFINITIONS

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

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

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

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

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

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

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

In this Constitution:

<b>“Accounting Officer”</b>	means the person who from time to time discharges the functions specified in paragraph 25(5) in Schedule 7 to the 2006 Act;
<b>“2006 Act”</b>	means the National Health Service Act 2006;
<b>"2012 Act"</b>	means the Health and Social Care Act 2012;
<b>“Annual Members’ Meeting”</b>	means the annual meeting of all the Members as described in Clause 8A.1 of this Constitution;
<b>“Appointed Governors”</b>	means those governors appointed by the Appointing Organisations;
<b>“Area of the Trust”</b>	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
<b>“Board of Directors”</b>	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in Clause 18 of this Constitution and “Board” shall be construed accordingly;
<b>"CCG"</b>	means a Clinical Commissioning Group established in accordance with Chapter A2 of Part 2 of the 2006 Act;
<b>"CCG Governor"</b>	means a member of the Council of Governors appointed in accordance with the provisions of this Constitution by the CCG specified in Annex 3;
<b>“Chairman”</b>	means the chairman of the Trust appointed in accordance with Clause 20 of this Constitution;
<b>“Chief Executive”</b>	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with Clause 23 of this

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	Constitution;
<b>“Company Secretary”</b>	means the Company Secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
<b>“Constituencies”</b>	means the Public Constituencies and the Staff Constituency;
<b>“Constitution”</b>	means this Constitution of Poole Hospital NHS Foundation Trust;
<b>“Council of Governors”</b>	means the Council of Governors of the Trust as constituted in accordance with this Constitution;
<b>"Director"</b>	means a director on the Board of Directors;
<b>“Elected Governors”</b>	means the Public Governors and the Staff Governors respectively;
<b>“Election Scheme”</b>	means the election scheme and rules set out in Annex 4 and which are to be used in connection with the election of the Elected Governors;
<b>“Executive Director”</b>	means an Executive Director of the Trust;
<b>“Finance Director”</b>	means the person who from time to time is appointed by the Trust to discharge the usual functions of its chief finance officer;
<b>“Financial Year”</b>	means a period of 12 months ending with 31 <sup>st</sup> March in any year;
<b>“Local Authorities”</b>	means those Councils specified in Annex 3, all of which are Councils for an area which includes the whole or part of the Area of the Trust, and “Local Authority” shall be construed accordingly;
<b>“Local Authority Governors”</b>	means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 3;
<b>"Member"</b>	means a Member of the Trust as determined in accordance with Clause 5 and Annex 8 of this Constitution;
<b>“Membership”</b>	means membership of the Trust through being a Member of one of its Constituencies;
<b>"Monitor"</b>	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
<b>“Governors Meetings”</b>	means a meeting of the Governors;
<b>“Governor”</b>	means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;
<b>“Model Election Rules”</b>	means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 4;
<b>“NHS Foundation Trust Code of Governance”</b>	means the Code of Governance published by Monitor in July 2014 or such similar or further guidance as Monitor/ NHS Improvement may publish from time to time;

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<b>“Nominations Committee”</b>	means the Nominations, Remunerations and Evaluation Committee established by the Council of Governors in accordance with Clause 10 of Annex 6;
<b>“Non-Executive Director”</b>	means a Non-Executive Director of the Trust;
<b>“Partnership Governor”</b>	means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 3;
<b>“Partnership Organisations”</b>	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 3;
<b>“Public Governor”</b>	means a Member of the Council of Governors elected by the Members of a Public Constituency;
<b>“Public Constituencies”</b>	means that part of the Trust’s membership consisting of Members living in the Area of the Trust;
<b>“Senior Independent Director”</b>	means the non-executive director appointed by the Board of Directors in accordance with Annex 7 clause 2.1.1 ii) of this Constitution;
<b>“Staff Classes”</b>	means the classes of the Staff Constituency as specified in Annex 2;
<b>“Staff Constituency”</b>	means that part of the Trust’s membership consisting of the staff of the Trust and other persons as more particularly provided for in Clause 7 of this Constitution and which is divided into the staff classes as specified in Annex 2;
<b>“Staff Governor”</b>	means a member of the Council of Governors elected by a Staff Class;
<b>“The Trust”</b>	means Poole Hospital NHS Foundation Trust;
<b>“Trust’s Hospital”</b>	means any premises used by the Trust for the provision of goods and services for the purposes of the health service in England falling within the definition of “hospital” in Section 275 of the 2006 Act;
<b>“Vice Chairman”</b>	means the Vice Chairman of the Trust;
<b>“Voluntary Organisation”</b>	means a body, other than a public or local authority, the activities of which are not carried on for profit.

### 1. NAME

The name of the foundation trust shall be Poole Hospital 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 purposes 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.

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- 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 paragraph 2.3 above for the purpose of making additional income available in order better to carry on its principal purpose.

### 3. POWERS

- 3.1 The powers of the Trust are set out in the 2006 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

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

- 4.1 a public constituencies; and
- 4.2 a staff constituency.

### 5. APPLICATION FOR MEMBERSHIP

- 5.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, save as provided for in Clause 7 of this Constitution.
- 5.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 8.

### 6. PUBLIC CONSTITUENCIES

- 6.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member of the Trust.
- 6.2 Those individuals who live in an area specified as an area for any Public Constituency are referred to collectively as the Public Constituency.
- 6.3 The minimum number of members in each area for a Public Constituency is specified in Annex 1.
- 6.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 8.



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### 7. STAFF CONSTITUENCY

- 7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
- 7.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 7.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, other than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this Clause 7 of the Constitution are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into two descriptions of individuals who are eligible for Membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a Staff Class within the Staff Constituency.
- 7.5 The minimum number of members in each Staff Class of the Staff Constituency is specified in Annex 2.

#### Automatic Membership by Default – Staff

- 7.6 An individual who is:
- 7.6.1 eligible to become a Member of the Staff Constituency, and
- 7.6.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate Staff Class within the Staff Constituency,
- shall become a Member of the Trust as a Member of the Staff Constituency and appropriate Staff Class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.
- 7.7 The process by which an individual shall be invited to become a Member of the Staff Constituency shall be in accordance with the provisions of Annex 8.

### 8. RESTRICTION ON MEMBERSHIP

- 8.1 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.
- 8.2 An individual who satisfies the criteria for Membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 8.3 Further provisions as to the circumstances in which an individual may not become or

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continue as a Member of the Trust are set out in Annex 8 – Further Provisions.

### 8A ANNUAL MEMBERS' MEETING

- 8A.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.
- 8A.2 Further provisions about the Annual Members' Meeting are set out in Annex 8, Paragraph 4 (Annual Members' Meeting).

### 9. COUNCIL OF GOVERNORS – COMPOSITION

- 9.1 The Trust shall have a Council of Governors which shall comprise both Elected and Appointed Governors.
- 9.2 The composition of the Council of Governors shall be as specified in Annex 3.
- 9.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.
- 9.4 The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

### 10. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 10.1 Elections for Elected Governors of the Council of Governors shall be conducted in accordance with the Model Election Rules, as may be varied from time to time.
- 10.2 The Model Election Rules, form part of this Constitution and are attached at Annex 4.
- 10.3 A subsequent variation of the Model Election Rules by the Department of Health and Social Care shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Election Rules.
- 10.4 An election, if contested, shall be by secret ballot.

### 11. COUNCIL OF GOVERNORS - TENURE

- 11.1 An Elected Governor shall hold office for a period of 3 years.
- 11.2 An Elected Governor shall cease to hold office if he ceases to be a Member of the constituency or class by which he was elected.
- 11.3 An Elected Governor shall be eligible for re-election at the end of his term, subject to the provisions of Clause 1 of Annex 5.
- 11.4 An Appointed Governor shall hold office for a period of three years, subject to the provisions of Clause 1 of Annex 5.
- 11.5 Further provision relating to a Governor's tenure of office are set out in Annex 5.

### 12. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

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

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- 12.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 12.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
  - 12.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
  - 12.1.4 a person who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.
  - 12.1.5 Disclosure and Barring Service checks (or any other checks required by the Trust from time to time as being consistent with its licence conditions or good governance arrangements) have not been undertaken concerning that person or that the results received by the Trust are not acceptable in all respects by the Trust.
- 12.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
  - 12.3 Further provisions as to the circumstances in which an individual may not become or may be removed as a member of the Council of Governors are set out in Annex 5.

### **12A. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

- 12A.1 The general duties of the Council of Governors are:
  - 12A.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
  - 12A.1.2 to represent the interests of the Members as a whole and the interests of the public.
- 12A.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

### **13. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

- 13.1 Subject to paragraph 3.4 of the Standing Orders for the Council of Governors at Annex 6 of this Constitution the Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of Clause 20 of this Constitution) or, in his absence the Vice Chairman appointed in accordance with the provisions of Clause 22 of this Constitution, shall preside at meetings of the Council of Governors.
- 13.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting on the grounds more particularly provided for in Annex 5.
- 13.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors

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may require one or more of the Directors' to attend a meeting.

### 14. 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 at Annex 6.

### 14A. NOT USED

### 15. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

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

### 16. 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.

### 17. COUNCIL OF GOVERNORS – FURTHER PROVISIONS

- 17.1 The Council of Governors may appoint a Nominations Committee consisting of all or some of its members to assist in carrying out those functions set out in Clauses 20 and 28.1 of this Constitution but not otherwise
- 17.2 Further provisions with respect to the Council of Governors are set out in Annex 5.

### 18. BOARD OF DIRECTORS – COMPOSITION

- 18.1 The Trust shall have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 18.2 The Board of Directors shall subject always to Clause 18.8 of this Constitution comprise:
- 18.2.1 a non-executive Chairman;
- 18.2.2 six other Non-Executive Directors (one of which may be nominated as the Senior Independent Director, see Annex 7); and
- 18.2.3 six Executive Directors,
- 18.3 One of the Executive Directors shall be the Chief Executive.
- 18.4 The Chief Executive shall be the Accounting Officer.
- 18.5 One of the Executive Directors shall be the Finance Director.

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- 18.6 One of the Executive Directors shall be a registered medical practitioner, (within the meaning of the Medical Act 1983 who holds a licence to practice under the Act), or a registered dentist (within the meaning of the Dentists Act 1984).
- 18.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 18.8 Board of Directors shall at all times be constituted so that the number of Non-Executive Directors exceeds the number of Executive Directors.

### 18A BOARD OF DIRECTORS – GENERAL DUTY

- 18A.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the Members as a whole and for the public.

### 19. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

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

- 19.1 he is a Member of a Public Constituency, and
- 19.2 he is not disqualified by virtue of Clause 25 of this Constitution.

### 20. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

- 20.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.
- 20.2 The removal of the Chairman or any other Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

### 21. NOT USED

### 22. BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIRMAN

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

### 23. BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

- 23.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 23.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 23.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

### 24. NOT USED

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### 25. BOARD OF DIRECTORS – DISQUALIFICATION

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

- 25.1 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 25.2 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.
- 25.3 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.
- 25.4 A person who falls within the further grounds for disqualification set out in Annex 8.
- 25.5 A person who is subject to an unexpired disqualification order made under the Company Directors' Disqualification Act 1986.
- 25.6 Disclosure and Barring Service checks (or any other checks required by the Trust from time to time as being consistent with its licence conditions or good governance arrangements) have not been undertaken concerning that person or that the results received by the Trust are not acceptable in all respects by the Trust.

### 25A BOARD OF DIRECTORS – MEETINGS

- 25A.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, including without limitation, where business involves information that relates to staff or patients or is commercially sensitive.
- 25A.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

### 26. BOARD OF DIRECTORS – STANDING ORDERS

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

### 27. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

- 27.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
  - 27.1.1 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.
  - 27.1.2 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.

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- 27.1.3 A duty to declare any gifts, hospitality (received or provided), outside employment, shareholdings and other ownership interests, patents, loyalty interests, donations, sponsored events, sponsored research and sponsored posts in accordance with the Trust's Managing Conflicts of Interest Policy.
- 27.2 The duty referred to in sub-clause 27.1.1 is not infringed if:
- 27.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 27.2.2 the matter has been authorised in accordance with the Constitution.
- 27.3 The duty referred to in sub-clause 27.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 27.4 In sub-clause 27.1.2, "third party" means a person other than:
- 27.4.1 the Trust, or
- 27.4.2 a person acting on its behalf.
- 27.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 27.6 If a declaration under this clause proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 27.7 Any declaration required by this clause must be made before the Trust enters into the transaction or arrangement.
- 27.8 This Clause 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.
- 27.9 A Director need not declare an interest:
- 27.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 27.9.2 if, or to the extent that, the Directors are already aware of it;
- 27.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- 27.9.3.1 by a meeting of the Board of Directors, or
- 27.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 27.10 The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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### 28. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 28.1 The Council of Governors at a general meeting of the Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.
- 28.2 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.

### 29 REGISTERS

The Trust shall have:

- 29.1 A register of members showing, in respect of each Member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 29.2 A register of members of the Council of Governors;
- 29.3 A register of interests of Governors;
- 29.4 A register of Directors; and
- 29.5 A register of interests of the Directors.
- 29.6 The process of admission to and removal from the registers shall be as set out in Annex 8.

### 30 REGISTERS – INSPECTION AND COPIES

- 30.1 The Trust shall make the registers specified in Clause 29 of this Constitution available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 30.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Trust, if he so requests.
- 30.3 So far as the registers are required to be made available:
- 30.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 30.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 30.4 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.

### 31 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

- 31.1 The Trust shall make the following documents available for inspection by members of



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the public free of charge at all reasonable times:

- 31.1.1 a copy of the current Constitution;
  - 31.1.2 a copy of the latest annual accounts and of any report of the auditor on them;  
and
  - 31.1.3 a copy of the latest annual report.
- 31.2 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:
- 31.2.1 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;
  - 31.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 31.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 31.2.4 a copy of any draft report published under Section 65F (administrator's draft report) of the 2006 Act;
  - 31.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 31.2.6 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;
  - 31.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 21.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 21.2.9 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;
  - 21.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 31.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 31.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

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### 32 AUDITOR

- 32.1 The Trust shall have an auditor.
- 32.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

### 33 AUDIT AND GOVERNANCE 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.

### 34 ACCOUNTS

- 34.1 The Trust shall keep proper accounts and proper records in relation to the accounts.
- 34.2 The Secretary of State may with the approval of the Treasury give directions to the Trust as to the content and form of its accounts.
- 34.3 The accounts are to be audited by the Trust's auditor.
- 34.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as the Secretary of State may with the approval of the Treasury direct.
- 34.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

### 35 ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

- 35.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 35.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 35.3 The document containing the information with respect to forward planning referred to at Clause 35.2 of this Constitution shall be prepared by the Directors.
- 35.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 35.5 Each forward plan must include information about:
  - 35.5.1 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
  - 35.5.2 the income it expects to receive from doing so.
- 35.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 35.5.1 the Council of Governors must:
  - 35.6.1 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

## CONSTITUTION

35.6.2 notify the Directors of the Trust of its determination.

35.7 The Trust may only implement any proposal 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 if more than half of the members of the Council of Governors voting approve its implementation.

### 36 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

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

36.1.1 the annual accounts;

36.1.2 any report of the auditor on them;

36.1.3 the annual report.

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

36.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of Clause 36.1 with the Annual Members' Meeting.

### 37 INSTRUMENTS

37.1 The Trust shall have a seal.

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

### 38. MERGERS, ACQUISITIONS, SEPARATION, DISSOLUTION AND SIGNIFICANT TRANSACTIONS

38.1 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.

38.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.

38.3 "significant transaction"<sup>1</sup> means:

38.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or

38.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or

38.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's

## CONSTITUTION

gross assets before the transaction.

38.4 For the purpose of this Clause 38:

38.4.1 "gross assets" means the total of fixed assets and current assets;

38.4.2 in assessing the value of any contingent liability for the purposes of sub-clause 38.3.3, the Directors:

38.4.2.1 must have regard to all circumstances that Directors know, or ought to know, affect or may affect, the value of the contingent liability; and

38.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

38.4.2.3 may take account of the likelihood of the contingency occurring.

## **ANNEX 1 – PUBLIC CONSTITUENCIES**

### **CONSTITUTION**

#### **ANNEX 1**

### **THE PUBLIC CONSTITUENCIES**

**ANNEX 1 – PUBLIC CONSTITUENCIES**

## ANNEX 1 – PUBLIC CONSTITUENCIES

### THE PUBLIC CONSTITUENCY

Table 1

Name of the Public Constituency	Area of the public constituency by Electoral Wards	Minimum number of Members	Number of Member Governors to be elected
<b>Poole</b>	The Electoral Area for the Poole Borough Council	50	8
<b>Purbeck, East Dorset and Christchurch</b>	The Electoral Area for the Purbeck District Council, East Dorset District Council and Christchurch Borough Council	50	3
<b>Bournemouth</b>	The Electoral Area for the Bournemouth Borough Council.	50	2
<b>North Dorset, West Dorset and Weymouth and Portland extended to and referred to as the rest of England with effect from 1 August 2014</b>	The Electoral Area for the North Dorset District Council, West Dorset District Council and Weymouth and Portland Borough Council extended to all electoral areas in England not set out above in this Table with effect from 1 August 2014	50	1

**ANNEX 1 – PUBLIC CONSTITUENCIES**



## **ANNEX 2 – THE STAFF CONSTITUENCY**

### **CONSTITUTION**

#### **ANNEX 2**

### **THE STAFF CONSTITUENCY**

## ANNEX 2 – THE STAFF CONSTITUENCY

## ANNEX 2 – THE STAFF CONSTITUENCY

### THE STAFF CONSTITUENCY

Table 1

Classes within the Staff Constituency	Individuals eligible for Membership of that class	Minimum number of Members	Number of Governors to be elected
<b>Clinical Staff Class</b>	Those individuals defined in clause 1 below	1,800	3
<b>Non-Clinical Staff Class</b>	Those individuals defined in clause 2 below	600	1

#### 1. CLINICAL STAFF CLASS

- 1.1 The members of the Clinical Staff Class are those individuals who are Members of the Staff Constituency who:
- i) are medical practitioners whose name appears on the List of Registered Medical Practitioners maintained and administered by the General Medical Council as registered to practice in the United Kingdom or who are pharmacists subject to regulation under the Pharmacy Act 1954 and who are otherwise fully authorised and licensed to practice in England and Wales in those professions; or
  - ii) are members of a profession regulated by the Nursing and Midwifery Council and who are otherwise fully authorised and licensed to practice in England and Wales in those professions; or
  - iii) whose regulatory body falls within the remit of the Council for the Regulation of Healthcare Professions established by Section 25 of the NHS Reform and Healthcare Professions Act 2002 other than those bodies responsible for the regulation of those individuals referred to at Clauses 1.1 (i) and 1.1 (ii) of this Annex; and
  - iv) are otherwise designated by the Company Secretary from time to time as eligible to be Members of this Staff Class having regard to the usual definitions applicable at that time for persons carrying on such professions; and
  - v) are employed by the Trust in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

## ANNEX 2 – THE STAFF CONSTITUENCY

### 2. NON-CLINICAL STAFF CLASS

- 2.1 The members of the Non-Clinical Staff Class are those individuals who are Members of the Staff Constituency who:
- i) do not come within those definitions set out in Clauses 1.1 (i) – (iv) of this Annex and who are designated by the Trust from time to time as eligible to be Members of this Staff Class; and
  - ii) are employed by the Trust to perform functions designated by the Trust for the purposes of Clauses 1.1 (i) – (iv) of this Annex and are engaged in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 8 and who at all times thereafter remain employed by the Trust in that capacity.

### 3. MINIMUM NUMBERS AND NUMBERS OF GOVERNORS

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

### 4. CONTINUOUS EMPLOYMENT

- 4.1 For the purposes of Clause 7 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

## **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

### **CONSTITUTION**

### **ANNEX 3**

### **COMPOSITION OF COUNCIL OF GOVERNORS**

## **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

### COMPOSITION OF COUNCIL OF GOVERNORS

#### 1. INTRODUCTION

- 1.1 The Council of Governors shall comprise of Governors who are:
- i) elected by the respective Constituencies in accordance with the provisions of this Constitution; or
  - ii) appointed in accordance with Clause 2 of this Annex.
- 1.2 The Council of Governors shall at all times be constituted so that more than half the Council of Governors shall consist of Governors who are elected by Members of the Trust other than those who are Members of the Staff Constituency.

#### 2. BODIES ENTITLED TO APPOINT A MEMBER OF THE COUNCIL OF Governors

- 2.1 The following bodies in this Clause 2 of this Annex 3 shall be entitled to appoint a Governor or Governors (as the case may be) to the Council of Governors as provided for in this Clause 2 of Annex 3.

##### CCG

- 2.2 NHS Dorset CCG shall be entitled to appoint one Governor in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude NHS Dorset CCG from appointing its Governor provided the appointment is duly made in accordance with the CCG's own internal processes.

##### Qualifying Local Authorities

- 2.3 Up to and including 31 March 2019, Dorset County Council, Poole Borough Council and Bournemouth Borough Council shall be entitled to appoint one Governor each in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said local authority from appointing its Governor.
- 2.4 From 1 April 2019, Dorset Council and Bournemouth, Christchurch and Poole Council shall be entitled to appoint one governor each in accordance with the process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said local authority from appointing its Governor.

##### Partnership Organisations

- 2.5 The Trust shall nominate the University of Bournemouth and Poole Hospital NHS Foundation Trust Volunteers Group to be designated as Partnership organisations for the purposes of this Constitution.
- 2.6 The University of Bournemouth and the Poole Hospital NHS Foundation Trust Volunteers Group shall be entitled to appoint one governor each in accordance with a process agreed by it with the Trust.
- 2.7 The absence of any process of appointment agreed with the Trust shall not preclude

### **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

the said Partnership Organisation from appointing its Governor provided that appointment is duly made in accordance with the University's and Poole Hospital's own internal processes.



## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

### 3. COMPOSITION OF THE COUNCIL OF Governors

	Electing/Appointing Body	Number of Governors	Total
<b>1.</b>	<b>Public Constituencies</b>		<b>14</b>
	1.1 Poole	8	
	1.2 Purbeck, East Dorset & Christchurch	3	
	1.3 Bournemouth	2	
	1.4 North Dorset, West Dorset and Weymouth & Portland (extended to the rest of England with effect from 1 August 2014)	1	
<b>2.</b>	<b>Staff Constituency</b>		<b>4</b>
	2.1 Clinical Staff Class	3	
	2.2 Non Clinical Staff Class	1	
<b>3.</b>	<b>Appointed Governors up to and including 31 March 2019</b>		<b>5</b>
	3.1 NHS Dorset CCG	1	
	3.2 Dorset County Council	1	
	3.3 Poole Borough Council	1	
	3.4 Bournemouth Borough Council	1	
	3.5 University of Bournemouth	1	
	<b>Appointed Governors from 1 April 2019</b>		<b>5</b>
	<b>NHS Dorset CCG</b>	1	
	<b>Dorset Council</b>	1	
	<b>Bournemouth, Christchurch and Poole Council</b>	1	
	<b>University of Bournemouth</b>	1	
	<b>Poole Hospitals Volunteers Group</b>	1	
	<b>Total number of Governors</b>	<b>23</b>	<b>23</b>

### 4. FURTHER PROVISION

- 4.1 Further provisions relating to the composition of the Council of Governors is at Annex 5.

## **CONSTITUTION**

### **ANNEX 4**

## **THE MODEL ELECTION RULES**

# THE MODEL ELECTION RULES

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## **PART 2 TIMETABLE FOR ELECTION**

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## **PART 3 RETURNING OFFICER**

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5. Staff
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14. Decisions as to Validity of Nomination Forms
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34. Procedure for Remote Voting by Telephone

35. Procedure for Remote Voting by Text Message

**Procedure for Receipt of Envelopes, Internet Votes, Telephone Vote and Text Message Votes**

36. Receipt of Voting Documents

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60. Secrecy

61. Prohibition of Disclosure to Vote

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63. Delay in Postal Service Through Industrial Action or Unforeseen Event

**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

“Corporation” means the public benefit corporation subject to this Constitution;

“Council of Governors” means the Council of Governors of the Corporation;

“declaration of identity” has the meaning set out in rule 21.1;

“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;

“e-voting” means voting using either the internet, telephone or text message;

“e-voting information” has the meaning set out in rule 24.2;

“ID declaration form” has the meaning set out in Rule 21.1; “internet voting record” has the meaning set out in rule 26.4(d);

“internet voting system” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“lead governor” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.

“list of eligible voters” means the list referred to in rule 22.1, containing the information in rule 22.2;

“method of polling” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

“Monitor” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

“numerical voting code” has the meaning set out in rule 64.2(b)

“polling website” has the meaning set out in rule 26.1;

“postal voting information” has the meaning set out in rule 24.1;

“telephone short code” means a short telephone number used for the purposes of submitting a vote by text message;

“telephone voting facility” has the meaning set out in rule 26.2;

“telephone voting record” has the meaning set out in rule 26.5 (d);

“text message voting facility” has the meaning set out in rule 26.3;

“text voting record” has the meaning set out in rule 26.6 (d);

“the telephone voting system” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

“the text message voting system” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,

“voting information” means postal voting information and/or e-voting information

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

**2. Timetable**

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms 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**

3.1 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.

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

**4. Returning Officer**

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

**5. Staff**

- 5.1 Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

**6. Expenditure**

- 6.1 The corporation is to pay the returning officer:
- a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
  - b) such remuneration and other expenses as the corporation may determine.

**7. Duty of Co-operation**

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



**8. Notice of Election**

8.1 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 forms may be obtained;
- e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) 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
- h) the date and time of the close of the poll in the event of a contest.

**9. Nomination of Candidates**

9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2 The returning Officer:

- a) is to supply any member of the corporation with a nomination form, and
- b) is to prepare a nomination form 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 and a nomination can, subject to rule 13, be in an electronic format.

**10. Candidate's Particulars**

10.1 The nomination form must state the candidate's:

- a) Full name
- b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication),and
- c) constituency, or class within a constituency, of which the candidate is a member.

## **11. Declaration of Interests**

11.1 The Nomination Form 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**

12.1 The nomination form must include a declaration made by the candidate:

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

## **13. Signature of Candidate**

13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, 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.

13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

## **14. Decisions as to the validity of nomination**

14.1 Where a nomination form 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 form 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.

14.2 The returning officer is entitled to decide that a nomination form 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 forms, 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, if required by rule 13.

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

14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

14.5 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 form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

## **15. Publication of statement of candidates**

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

15.2 The statement must show:

- a) the name, contact address (which shall be the candidate's postal 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 form.

15.3 The statement must list the candidates standing for election in alphabetical order by surname.

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

## **16. Inspection of statement of nominated candidates and nomination forms**

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

## **17. Withdrawal of Candidates**

17.1 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**

18.1 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.

18.2 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.

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:

- a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

**19. Poll to be taken by Ballot**

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
  - b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
  - c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

**20. The Ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) 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.
- 20.2 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 by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- 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.

20.3 Each ballot paper must have a unique identifier.

20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - (ii) to whom the voter ID number contained within the e-voting information was allocated
- b) that he or she has not marked or returned any other voting information in the election, and
- c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

(“declaration of identity”)

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form (“ID declaration form”) or the use of an electronic method.

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

### **Action to be taken before the poll**

## **22. List of Eligible Voters**

22.1 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 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

- a) a postal address; and
- b) the member's e-mail address, if this has been provided

To which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

## **23. Notice of Poll**

23.1 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 methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- g) the address for return of the ballot papers,
- h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- k) the date and time of the close of the poll,
- l) the address and final dates for applications for replacement voting information, and
- m) the contact details of the returning officer.

## **24. Issue of voting information by returning officer**

- 24.1 Subject to rule 24.3, 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 information by post to each member of the corporation named in the list of eligible voters:
- a) a ballot paper and ballot paper envelope,
  - b) the ID declaration form (if required),
  - c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - d) a covering envelope;
- ("postal voting information").
- 24.2 Subject to rules 24.3 and 24.4, 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 information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/or rule 19.4 may cast his or her vote by an e-voting method of polling:
- a) instructions on how to vote and how to make a declaration of identity (if required),
  - b) the voter's voter ID number,
  - c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
  - d) contact details of the returning officer,
- ("e-voting information").
- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
  - (b) only be sent e-voting information; or
  - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

## **25 Ballot paper envelope and covering envelope**



- 25.1 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.
- 25.2 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.
- 25.3 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 ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

## **26. E-voting systems**

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) 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,
    - (v) instructions on how to vote and how to make a declaration of identity,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter's vote,
  - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - (f) prevent any voter from voting after the close of poll.

26.5

The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) instructions on how to vote and how to make a declaration of identity,
  - (v) the date and time of the close of the poll, and
  - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

- 26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:
- (a) require a voter to:
    - (i) provide his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) prevent any voter from voting after the close of poll.

### **The poll**

## **27. Eligibility to vote**

- 27.1 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.

## **28. Voting by persons who require assistance**

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 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.

## **29. Spoilt ballot papers and spoilt text message votes.**

- 29.1 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 as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 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.

- 29.3 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 completed ID declaration form, if required, has not been returned.
- 29.4 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.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
  - (c) the details of the replacement voter ID number issued to the voter.

### **30. Lost voting information**

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information 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 voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.

- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):
- (a) the name of the voter
  - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
  - (c) the voter ID number of the voter.

**31. Issue of replacement voting information**

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.

**32. ID declaration form for replacement ballot papers (public and patient constituencies)**

- 32.1 In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

**Polling by internet, telephone or text**

**33. Procedure for remote voting by internet**

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

**34 Voting procedure for remote voting by telephone**

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

### **35 Voting procedure for remote voting by text message**

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

Procedure for receipt of envelopes, internet votes, telephone votes and text message votes

### **36. Receipt of voting documents**

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
  - (b) any other envelope containing an ID declaration form 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 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, 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
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

**37. Validity of votes**

37.1 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 an ID declaration form if required that has been correctly completed, signed and dated.

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

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

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

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

37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (c) place the document or documents in a separate packet.

**38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**

38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “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 ID declaration form in a separate packet.

**39. De-duplication of votes**

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

**40. Sealing of packets**

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:



- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

**41. Arrangements for counting of the votes**

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

41.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
  - (i) the use of such software for the purpose of counting votes in the relevant election, and
  - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

**42. The Count**

42.1 The Returning Officer is to:

- (a) count and record the number of:
  - (i) ballot papers that have been returned; and
  - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 41.2(ii) where vote counting software is being used.

42.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records 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 or the voter ID number on an internet voting record, telephone voting record or text voting record.

42.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

**43. Rejected ballot papers and rejected text voting records**

43.1 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 rules 43.2 and 43.3, be rejected and not counted.

43.2 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.

43.3 A ballot paper on which a vote is marked:

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

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

43.4 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 rules 43.2 and 43.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

43.5 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.

43.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules 43.7 and 43.8 be rejected and not counted.

43.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

43.8 A text voting record on which a vote is marked:

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

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

43.9 The returning officer is to:

- (a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules 43.7 and 43.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

43.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- (a) voting for more candidates than the voter is entitled to,
- (b) write or mark by which voter can be identified, and
- (c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

#### **44 Equality of votes.**

44.1 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.

**45 Declaration of result for contested elections**

45.1 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:
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Poole Hospital NHS Foundation Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
  - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

45.2 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 43.5,
- (c) the number of rejected text voting records under each of the headings in rule 43.10,

available on request.

**46. Declaration of result for uncontested elections**

46.1 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.

**47 Sealing up of documents relating to the poll**

47.1 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, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with “rejected in part”,
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records,

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

47.2 The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoiled ballot papers and the list of spoiled text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

47.3 The returning officer must endorse on each packet a description of:

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

**48. Delivery of documents**

48.1 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.

## **49. Forwarding of documents received after close of the poll**

49.1 Where:

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

## **50. Retention and public inspection of documents**

50.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

50.2 With the exception of the documents listed in rule 51.1, 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.

50.3 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.

## **51. Application for inspection of certain documents relating to an election**

51.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing
  - (i) any rejected ballot papers, including ballot papers rejected in part,
  - (ii) any rejected text voting records, including text voting records rejected in part,
  - (iii) any disqualified documents, or the list of disqualified documents,
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

by any person without the consent of the board of directors of the corporation.

51.2 A person may apply to the board of directors of the corporation to inspect any

of the documents listed in rule 51.1, and the board of directors of the corporation 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.

51.3 The board of directors of the corporation'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.

51.4 On an application to inspect any of the documents listed in rule 51.1 the board of directors of the corporation must:

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

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 Monitor has declared that the vote was invalid.



**52. Countermand or abandonment of poll on death of candidate**

- 52.1 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 voting information has 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.
- 52.2 Where a new election is ordered under rule 52.1, 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.
- 52.3 Where a poll is abandoned under rule 52.1 (a), rules 52.4 and 52.7 are to apply.
- 52.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- 52.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
  - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 52.6 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.

52.7

Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 52.4 and 52.6, the returning officer is to deliver them to the chairman of the corporation, and rules 50 and 51 are to apply.

**53. Election Expenses**

53.1 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 made to Monitor under Part 11 of these rules.

**54. Expenses and payments by candidates**

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

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

**55. Election expenses incurred by other persons**

55.1 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.

55.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 54 and 55.

**Publicity**

**56. Publicity about election by the corporation**

56.1 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

56.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 57, 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.

56.3 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.

## **57. Information about candidates for inclusion with voting information**

57.1 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.

57.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

## **58. Meaning of “for the purposes of an election”**

58.1 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.

58.2 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 **OUTSTANDING ELECTIONS AND THE CONSEQUENCES OF IRREGULARITIES**

**59. Application to question an election**

- 59.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor.
- 59.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 59.3 An application may only be made to Monitor 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.
- 59.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as Monitor may require.
- 59.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 59.6 If Monitor requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 59.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 59.8 The determination by the person or panel of persons nominated in accordance with rule 66.7 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.
- 59.9 Monitor may prescribe rules of procedure for the determination of an application including costs.

**60. Secrecy**

60.1 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 voting information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

60.2 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 or the voter ID number allocated to a voter.

60.3 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.

**61 Prohibition of disclosure of vote**

61.1 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.

**62. Disqualification**

62.1 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.

**63. Delay in postal service through industrial action or unforeseen event**

63.1 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,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

**CONSTITUTION**

**ANNEX 5**

**ADDITIONAL PROVISIONS:  
COUNCIL OF GOVERNORS**



## **ANNEX 5 – ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS**

## ANNEX 5 – ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

### 1. TERMS OF OFFICE

- 1.1 A Governor shall be:
- i) elected or appointed for a term of three years;
  - ii) shall be eligible for re-election or re-appointment at the end of that term but may not serve as a Governors for more than a total of nine years;
  - iii) shall cease to hold office if:
    - a) he ceases to be a member of a Trust constituency or, in the case of an Appointed Governor, if the body which appointed him withdraws its appointment at any time;
    - b) his term of office is terminated in accordance with Clause 3 of this Annex and/or he is disqualified from or is otherwise ineligible to hold office as a Governor; or
    - c) he resigns by notice in writing to the Trust.

### 2. REMOVAL AND DISQUALIFICATION

- 2.1 A Governor shall not be eligible to become or continue in office as a Governor if:
- i) he ceases to be eligible to be a Member, save in the case of Appointed Governors;
  - ii) in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him;
  - iii) any of the grounds contained in Clause 12 of the Constitution apply to him;
  - iv) he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
  - v) he is a person whose term of office as the Chairman or as a Member or Director of a health service body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
  - vi) he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part Two of that Act and has not subsequently had his name included in such a list;
  - vii) he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act;
  - viii) he is subject to a direction made under Section 142 of the Education Act 2002;
  - ix) he is the subject of a sex offender order as a result of being convicted or cautioned for relevant sex offences pursuant to the Sexual Offences Act 2003 or other relevant legislation;

## ANNEX 5 – ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

- x) Monitor has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or Monitor has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
  - xi) he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff, patients, relatives or visitors;
  - xii) he is or has been determined by the Trust as a vexatious or persistent litigant or complainant with regard to the Trust's affairs and nine years have not passed since the date of lifting of such determination;
  - xiii) his term of office is terminated pursuant to Clause 3 of this Annex;
  - xiv) he is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months;
  - xv) he has within the preceding nine years been expelled for whatever reason from another NHS Foundation Trust;
  - xvi) he refuses or has refused within the preceding six years, without reasonable cause, to undertake training which the Council of Governors requires all Governors to take;
  - xvii) if he was at any time eligible to be a member of the Staff Constituency during the period he is or was a member of a Public Constituency;
  - xviii) disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements) are such that it would be inappropriate, in the reasonable opinion of the Chief Executive, for him to become or continue as a Governor on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute; or
  - xix) he is a partner or spouse or otherwise related to an existing Director;
  - xx) he is a Director or Senior Manager of an NHS organisation save of in the case of an Appointed Governor.
- 2.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Trust in writing of such disqualification as soon as practicable and in any event within fourteen days of first becoming aware of those matters which rendered him disqualified.
- 2.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable.
- 2.4 Upon the giving of notice under Clauses 2.2 and 2.3 of this Annex, that person's tenure of office as a Governor shall thereupon be terminated and he shall cease to be a Governor and his name shall be removed from the Register of Governors.

## ANNEX 5 – ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

### 3. TERMINATION OF TENURE

- 3.1 A Governor's term of office shall be terminated:
- i) by the Governor giving notice in writing to the Company Secretary of his resignation from office at any time during that term of office;
  - ii) by the Trust if any grounds exist under Clause 2 of this Annex;
  - iii) by the Council of Governors if he has failed to attend two successive meetings of the Council of Governors unless the Council of Governors is satisfied;
    - a) the absence was due to reasonable cause; and
    - b) that the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.
  - iv) if the Council of Governors resolves to terminate his term of office for reasonable cause on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose:
    - a) find his continuing as a Governor would or would be likely to:
      - 1) prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
      - 2) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
      - 3) adversely affect public confidence in the goods and services provided by the Trust; or
      - 4) otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or
      - 5) not be in the best interests of the Trust for that person to continue in office as a Governor;
    - d) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust; or
    - e) he has committed a material breach of any code of conduct applicable to Governors of the Trust.
- 3.2 Upon a Governor resigning under Clause 3.1 (i) of this Annex or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and his name shall be forthwith removed from the Register of Governors.
- 3.3 The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to

## ANNEX 5 – ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

appeal against the decision terminating his tenure of office.

### 3.4 A Governor:

3.4.1 who resigns or whose tenure of office is terminated under Paragraph 3.1(iii) of this Annex” shall not be eligible to stand for re-election for a period of six years from the date of his resignation or removal from office pursuant to Paragraph 3.1(iii); or

3.4.2 whose tenure of office is terminated under Paragraph 3.1(iv) of this Annex shall not be eligible to stand for re-election for a period of nine years from the date of his removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later.

3.5 Not less than twenty per cent of the Governors may, where the process leading to the possible removal of a Governor has been initiated, require the appointment of an Independent Assessor to consider the evidence and advise as to the appropriateness of removal. It will also be available to the Chairman to initiate any such independent assessment at any time.

## 4. VACANCIES

4.1 Where a Governor’s term of office terminates for whatever reason then:

- i) in the case of an Appointed Governor, the Trust shall invite the relevant appointing body to appoint a new Governor as soon as practicable; and
- ii) in the case of an Elected Governor, elections for a new Governor shall take place as soon as practicable subject to the provisions of Clauses 4.2 and 4.3 of this Annex.

4.2 Where an Elected Governor ceases for whatever reason to hold office within twelve months of his election:

- i) the Trust shall offer the candidate who was ranked next highest in the last election for the constituency, class or Staff Class (as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office of Governor for the unexpired balance of the former Governor’s term of office;
- ii) if that candidate does not accept that invitation in a timely manner it shall be offered to that candidate who was next highest ranked in the last said election until the vacancy is filled; but if no other candidate stood for election or there are no remaining candidates who stood for election to that office or no candidate accepts the Trust’s invitation in accordance with the above provisions within such time as the Trust may in its absolute discretion decide, the Trust shall hold an election for the vacancy as soon as reasonably practicable thereafter.

4.3 Subject to the provisions of Clause 4.4 of this Annex, where an Elected Governor ceases for whatever reason to hold office within the last twelve months of his term of office, the office shall remain vacant until the next scheduled election takes place.

4.4 Notwithstanding the above provisions of this Clause 4 of this Annex, where the termination of a Governor’s term of office causes the total number of Public Governors to be equal to or fewer than the other Governors of the Trust then an election for that vacant office shall be held as soon as reasonably practicable.

## ANNEX 5 – ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

- 4.5 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

### 5. ROLE

- 5.1 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance.
- 5.2 Subject to the requirement specified in Clause 5.1 of this Annex, each Governor shall exercise his own skill and judgement in his conduct of the Trust's affairs and shall in his stewardship of the Trust's affairs bring as appropriate the perspective of the constituency or organisation by which he was elected or appointed, as the case may be.
- 5.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Council of Governors shall;
- i) assist the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set; and
  - ii) monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with the terms of this Constitution.

### 6. MEETINGS

- 6.1 The Council of Governors shall hold not less than three general meetings each Financial Year.
- 6.2 All such meetings shall be open to the public unless the Council of Governors resolves that the public be excluded from the meeting, whether for the whole or part of the proceedings on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings. The Chairman may also exclude any member of the public from a meeting of the Council of Governors if he is interfering with or preventing the proper conduct of the meeting.
- 6.3 The Council of Governors may appoint committees or sub-committees consisting of its members to advise and assist it in the discharge of its functions.
- 6.4 The Council of Governors may request the attendance of some or all of the members of the Board of Directors at its meetings and the Board of Directors may attend and may give such reports and information to the Council of Governors as the Board of Directors considers appropriate and subject always to the other provisions of this Constitution.
- 6.5 Further provisions relating to the Council of Governors meetings are set out in the Council of Governors Standing Orders at Annex 6 of this Constitution.

## ANNEX 5 – ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

### 7. DECLARATIONS

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

I, the above named candidate, consent to my nomination and agree to stand for election. I confirm that, to the best of my knowledge, the information provided on (or with) this form is accurate. I also agree to abide by the Poole Hospital NHS Foundation Trust Code of Conduct and the NHS core principles.

I declare that I am resident at the address given and that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named overleaf. I declare that I am not debarred from standing by any of the provisions detailed in Section 1 of the guidance notes and the Exclusion and Disqualification criteria also detailed in the guidance notes supplied with this nominations paper. I understand if any declaration on this form is later found to be false I will, if elected, lose my seat on the Council of Governors and may have my membership withdrawn.

- 7.3 A Governor elected to the Council of Governors by the Public Constituency or a Staff Class within the Staff Constituency may not vote at a meeting of the Council of Governors unless, within the period since his election, he has made a declaration in the form specified in Clause 7.4 of this Annex stating which Constituency or Class of Constituency he is a Member of and is not prevented from being a member of the Council of Governors by Paragraph 8 of Schedule 7 to the 2006 or by virtue of any provisions of this Constitution.

7.4 The specified form of declaration referred to in Clause 7.3 of this Annex shall state as follows:

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

**ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS**

**CONSTITUTION**

**ANNEX 6**

**STANDING ORDERS:  
COUNCIL OF GOVERNORS**



**ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS**

**Poole Hospital NHS Foundation Trust**

**Standing Orders**

**Council of Governors**

## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

### FOREWORD

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

## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

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## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

### INTRODUCTION

Poole Hospital NHS Foundation Trust (the Trust) became a Public Benefit Corporation on 1 November 2007 following authorisation by Monitor.

The Trust is governed by the 2006 Act, the 2012 Act and its Constitution (the Regulatory Framework).

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

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

### 1. INTERPRETATION

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

<b>"The 2006 Act"</b>	shall mean the National Health Service Act 2006 as amended by the 2012 Act;
<b>"The 2012 Act"</b>	shall mean the Health and Social Care Act 2012;
<b>"Board of Directors"</b>	shall mean the Board of Directors as constituted in accordance with the Trust's Constitution;
<b>"Company Secretary"</b>	means the Company Secretary of the Trust or any other person appointed to perform the duties of the Company Secretary of the Trust;
<b>"Council of Governors "</b>	shall mean the Council of Governors as constituted in accordance with the Trust's Constitution;
<b>"Chairman"</b>	means the person appointed by the Council of Governors (in accordance with Clause 20 of the Constitution) to be Chairman of the Trust;
<b>"Chief Executive"</b>	shall mean the chief officer of the Trust;
<b>"Director"</b>	means a member of the Board of Directors;
<b>"Director of Finance"</b>	shall mean the chief finance officer of the Trust;
<b>"Governors"</b>	shall mean a member of the Council of Governors as defined in interpretations and definitions of the Constitution;
<b>"Motion"</b>	means a formal proposal to be discussed and voted on during the course of a meeting;
<b>"Officer"</b>	means an employee of the Trust;
<b>"Trust"</b>	means the Poole Hospital NHS Foundation Trust;
<b>"Vice Chairman"</b>	means the Vice Chairman appointed in accordance with

## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

Clause 22 of the Constitution to preside at meetings of the Council of Governors in the Chairman's absence.

### 2. THE COUNCIL OF GOVERNORS

#### Roles and Responsibilities

2.1 The roles and responsibilities of Governors are:

- i) the appointment and removal of the Chairman and Non-Executive Directors (Constitution Clause 20);
- ii) to approve the appointment of the Chief Executive (Constitution Clause 23);
- iii) to appoint and remove the Auditor (Constitution Clause 32);
- iv) to receive the Annual Report and Accounts (Constitution Clause 36);
- v) to oversee and advise the Board of Directors regarding future Trust plans and priorities;
- vi) to respond as appropriate when consulted by the Board of Directors in accordance with the Trust's Constitution;
- vii) to agree and from time to time review the Trust's membership strategy, its policy for the composition of the Council of Governors and the Non-Executive Directors;
- viii) to be involved in review of a specific issue, or be involved in further development of a particular strategy as the Board of Directors may from time to time request;
- ix) to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and to represent the interests of the Members as a whole and the interests of the public, and monitor the performance of the Trust against the strategic direction and the targets with a view to satisfying itself that the Board of Directors is fulfilling its responsibilities in this regard. This will be achieved by regularly briefings on the performance of the Trust and at its meetings, being able to consider and comment on that performance;
- x) to positively contribute to the continued success of the organisation through overseeing of effective management, partnership working and maintenance of NHS values and principles;
- xi) to require one or more Directors to attend a meeting of the Council of Governors for the purpose 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) (Constitution Clause 12A);
- xii) to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to Monitor and the entering into of any significant transactions; and

## **ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS**

- xiii) to determine issues in the forward plans regarding the proportion of the Trust's activities and income relation to non-NHS income and implementation of the same.

### **Composition of the Council of Governors**

- 2.2 The composition of the Council of Governors shall be as set out in Annex 3 of the Constitution.

### **Appointment of the Chairman and Non Executive Directors**

- 2.3 The Chairman and Non-Executive Directors are appointed by the Council of Governors in accordance with Clause 20 of the Constitution.

### **Terms of Office of the Chairman and Non Executive Directors**

- 2.4 The provisions governing the period of tenure of office of the Chairman and the Non Executive Directors are contained in Clause 28 of the Constitution.

### **Appointment of Vice-Chairman of the Board and of the Council of Governors**

- 2.5 The Council of Governors shall appoint a Vice-Chairman in accordance with Clause 22 of the Constitution.
- 2.6 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman (in Chairman's capacity of Chair of Board and Chair of Council of Governors). The Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chairman in accordance with Clause 22.
- 2.7 The Vice-Chairman may preside at meetings of the Council of Governors in the following circumstances:
  - i) when there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chairman is not present;
  - ii) when the remuneration, allowances and other terms and conditions of the Chairman are being considered;
  - iii) when the appointment of the Chairman is being considered, should the current Chairman be a candidate for reappointment;
  - iv) on occasions when the Chairman declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council of Governors.

## **3. MEETINGS OF THE COUNCIL OF Governors**

### **Calling Meetings**

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

## **ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS**

### **Admission of the Public**

- 3.3 The provisions for the admission of the public to meetings of the Council of Governors are detailed at Clause 13 and Annex 5 of the Constitution.

### **Chairman of Meetings**

- 3.4 The Chairman of the Trust, or in his absence, the Vice Chairman is to preside at meetings of the Council of Governors. If the Chairman is absent from a meeting or temporarily absent on the grounds of a declared conflict of interest the Vice-Chairman shall preside. If the Chairman and Vice-Chairman are absent, such Non-Executive Director as the Governors present shall choose shall preside.

### **Setting the Agenda**

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

### **Agenda**

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

### **Notices of Motion**

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

### **Withdrawal of Motion or Amendments**

- 3.8 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.

### **Motion to Rescind a Resolution**

- 3.9 Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall be in writing, be in accordance of Standing Order 3.6 of this Annex and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chairman to propose a motion to the same effect within six months, however the Chairman may do so if he considers it appropriate.



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### Motions

- 3.10 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.11 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- i) an amendment to the motion.
  - ii) the adjournment of the discussion or the meeting.
  - iii) that the meeting proceed to the next business.
  - iv) that the motion be now put.
- 3.12 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.

### Chairman's Ruling

- 3.13 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.
- 3.14 Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).

### Voting

- 3.15 Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.
- 3.16 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 3.17 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 3.18 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.19 If at least one third of the Governors so agree, Governors may participate in a Council of Governor meeting by telephone, video or computer link. Participating in this manner shall be deemed to constitute presence in person at the meeting.

### Minutes

- 3.20 The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person

## **ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS**

presiding at it.

- 3.21 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.22 Minutes of meetings will be taken and circulated in accordance with Governors' wishes.

### **Suspension of Standing Orders**

- 3.23 Except where this would contravene any statutory provision and/or the Regulatory Framework, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present, including one Public Governor and one Staff Governor, and that a majority of those present vote in favour of suspension.
- 3.24 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.25 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 3.26 No formal business may be transacted while Standing Orders are suspended.

### **Variation and Amendment of Standing Orders**

- 3.27 These Standing Orders shall be amended only in accordance with Annex 8, Paragraph 7 (Amendment of Constitution).

### **Record of Attendance**

- 3.28 The names of the Governors present at the meeting shall be recorded in the minutes.

### **Quorum**

- 3.29 No business shall be transacted at a meeting of the Council of Governors unless at least ten of the Council of Governors are present and that those present include at least one Staff Governor, seven Public Governors and one Appointed Governor.
- 3.30 A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.31 Subject to Standing Orders in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chairman, to speak to any item under consideration.

## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

### 4. COMMITTEES

- 4.1 Except as required by Clause 17.1 of the Constitution, the Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a Committee.

### 5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

#### Declaration of Interests

- 5.1 In accordance with Clause 15 of the Constitution, Governors are required to declare formally any direct or indirect pecuniary interest and any other interest (personal or family or loyalty interest) which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 5.2 A Governor must declare to the Company Secretary:
- i) any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, and
  - ii) any interests (personal or family or loyalty interests) which are relevant and material to the business of the Trust.
- 5.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Company Secretary from time to time, setting out any interests required to be declared in accordance with the Constitution or these Standing Orders and delivering it to the Company Secretary within twenty eight days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Company Secretary shall amend the Register of Interests upon receipt of notification within three working days.
- 5.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter. The provisions of this Clause are subject to Clause 5.9 of this Annex.
- 5.5 "relevant and material" interests may include but may not be limited to the following:
- i) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
  - ii) ownership or part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
  - iii) majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
  - iv) a position of authority in a charity or voluntary organisation in the field of health and social care;
  - v) any connection with a voluntary or other organisation contracting for or commissioning NHS services
  - vi) any connection with an organisation, entity or company considering entering

## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

- into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
- vii) research funding/grants that may be received by an individual or their department;
  - viii) interests in pooled funds that are under separate management.
- 5.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 5.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- i) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - ii) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 5.8 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- i) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
  - ii) of an interest in any company, body or person with which he is connected as mentioned in Clauses 5.3, 5.4 and 5.5 of this Annex which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 5.9 Where a Governor:
- i) 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
  - ii) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
  - iii) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- 5.10 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.

## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

- 5.11 If Governors have any doubt about the relevance of an interest, this should be discussed with the Company Secretary.

### Register of Interests

- 5.12 The Company Secretary shall record any declarations of interest made in a Register of Interests kept by him in accordance with Clause 29 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
- 5.13 The Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register.

## 6. STANDARDS OF BUSINESS CONDUCT

### Policy

- 6.1 In relation to their conduct as a Governor of the Trust, each Governor must comply with the Constitution, the NHS Foundation Trust Code of Governance, the requirements of the law and any applicable guidance and directions issued by NHS Improvement. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.

### Interest of Governors in Contracts

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

## 7. REMUNERATION

- 7.1 Governors are not to receive remuneration.

## 8. PAYMENT OF EXPENSES TO GOVERNORS

- 8.1 The Trust will pay travelling expenses to Governors for attendance at General Meetings of the Governors, or any other business authorised by the Company Secretary as being under the auspices of the Council of Governors.
- 8.2 Mileage claims will be reimbursed at the prevalent Inland Revenue Allowable Mileage Rate. Car parking and public transport fares will be reimbursed at the cost incurred subject to Trust policies.
- 8.3 Any other expenses relating to business will require the prior authorisation of the Company Secretary.
- 8.4 Expenses will be authorised and reimbursed through the Company Secretary's office on receipt of a completed and signed expenses form provided by the Company Secretary.

## ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS

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

### 9. RESOLUTION OF DISPUTES

#### Dispute Resolution between Board of Directors and Council of Governors

- 9.1 Within twenty eight days of resolving that a dispute exists with the other, the Company Secretary shall call a joint meeting to be held as soon as reasonably practicable within three months of the resolution. The joint meeting shall be held under the Trust's Board of Directors' Standing Orders, but the provisions of these Standing Orders in relation to interests shall apply to Governors attending the joint meeting as they apply to a Council of Governor meeting.
- 9.2 The joint meeting shall be chaired by the Chairman and the agenda shall be agreed by him with the Chief Executive. The joint meeting shall either recommend to each of the constituents a formula for resolving the dispute which each shall receive and consider formally as soon as practicable, or, if possible, shall agree the relevant issues and the possible ways forward.
- 9.3 If either constituent resolves to refer the issue to mediation, the Chairman and a nominated Governor on behalf of the Council of Governors and the Chief Executive and the Vice Chairman of the Board of Directors shall meet within twenty eight days of such resolution to agree a mediator. In default of agreement, either constituent may resolve to refer the dispute to arbitration.
- 9.4 If either constituent resolves to refer a dispute to arbitration, the same four referred to in the preceding sub-clause may agree an arbitrator. If this is not done within twenty eight days of such resolution, the Company Secretary of the Trust on the instructions of either constituent shall refer the dispute to the Chartered Institute for Arbitrators to be finally resolved by arbitration.
- 9.5 The existence of the dispute shall not prejudice the duty of the Board of Directors in the exercise of the Trust's powers on its behalf.

### 10. NOMINATIONS, REMUNERATIONS AND EVALUATION COMMITTEE

- 10.1 The Council of Governors shall establish a committee consisting of some or all of its members to be called the Nominations Committee in accordance with Clause 17.1 of the Constitution to discharge those functions in relation to the appointment of the Chairman and Non-Executive Directors described in Clause 10.2 below and such other functions as are provided for in Clause 10.4 of this Annex.
- 10.2 The functions of the Nomination Committee shall be as follows:-
- 10.2.1 to determine the criteria of process for the selection of candidates for office as Chairman or other Non-Executive Director of the Trust having first consulted with the Board of Directors as to these matters and having regard to such views as may be expressed by the Board of Directors;
- 10.2.2 to seek by way of open advertisements and other means candidates for office and to assess, shortlist and select for interview such candidates as are considered appropriate and in doing so the Nomination Committee shall be at liberty to seek advice and assistance from persons other than members of the Nomination Committee or of the Council of Governors such as external organisations recognised as experts at appointment to identify

## **ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS**

- the skills and experience required of Chairman and Non-Executive Directors;
- 10.2.3 to make recommendations to the Council of Governors as to potential candidates for appointment as Chairman or other Non-Executive Director, as the case may be;
- 10.2.4 as further stipulated in Clause 10.4 of this Annex.
- 10.3 The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and on reaching its decision it shall have regard to the Board of Directors and of the Nomination Committee as to the suitability of the available candidates.
- 10.4 The Nomination Committee shall:-
- 10.4.1 on a regular and systematic basis monitor the performance of the Chairman and other Non-Executive Directors and make reports thereon to the Council of Governors from time to time when requested to do so or when in the opinion of the Nomination Committee the results of such monitoring ought properly to be brought to the attention of the Council of Governors; and
- 10.4.2 consider and make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Chairman and Non-Executive Directors;
- 10.4.3 review the structure, size and composition of the Board of Directors from time to time and to make any recommendation to the Council of Governors.

## **11. MISCELLANEOUS**

### **Review of Standing Orders**

- 11.1 These Standing Orders shall be reviewed periodically by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

### **Vice Chairman**

- 11.2 In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors, which arises during the Chairman's absence or unavailability, the Vice-Chairman may exercise such power as the Chairman would have in those circumstances.

### **Notice**

- 11.3 Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.

### **Confidentiality**

- 11.4 A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

**ANNEX 6 – STANDING ORDERS: COUNCIL OF GOVERNORS**



**CONSTITUTION**

**ANNEX 7**

**STANDING ORDERS:  
BOARD OF DIRECTORS  
(Extract from Standing Orders, Reservation and Delegation of  
Powers and Standing Financial Instructions)**



**Poole Hospital NHS Foundation Trust**

**Standing Orders**

**Board of Directors**

### FOREWORD

This document, together with the Standing Financial Instructions provides a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less properly.

All Executive and Non-Executive Directors should be aware of the existence of this document and, where necessary, be familiar with the detailed provisions.

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

### SECTION A: INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

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 they should be advised by the Chief Executive or Company Secretary to the Board).

Any expression to which a meaning is given in the National Health Service Act 2006 as amended by the 2012 Act, and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and in addition:

<b>the 2006 Act</b>	means the National Health Service Act 2006.
<b>the 2012 Act</b>	means the Health and Social Care Act 2012.
<b>Accounting Officer</b>	means the Officer who discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act and who is responsible for ensuring the proper stewardship of public funds and assets, which shall be the Chief Executive.
<b>Associate Member</b>	means a person appointed to perform specific statutory and non-statutory duties which have been delegated by the Trust Board for them to perform and these duties have been recorded in an appropriate Trust Board minute or other suitable record.
<b>Board</b>	means the Chairman, Executive, and Non-Executive Directors, as constituted in accordance with the Constitution.
<b>Budget</b>	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.
<b>Budget Holder</b>	means the Director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.
<b>Chairman</b>	means the Chairman of the Trust. The expression “the Chairman” or “the Chairman of the Trust” shall be deemed to include the Vice-Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.
<b>Chief Executive</b>	means the chief officer of the Trust.
<b>Clinical Governance Group</b>	means a committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of health care for which the Trust has responsibility.
<b>Commissioning</b>	means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.
<b>Committee</b>	means a committee or sub-committee created and appointed by the Trust.
<b>Committee Members</b>	means persons formally appointed by the Board to sit on or to chair specific committees.
<b>Company Secretary</b>	means the Company Secretary of the Trust (if one is appointed).

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

<b>Constitution</b>	means this Constitution and all annexes to it which describes the operation of the Trust.
<b>Contracting and procuring</b>	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.
<b>Council of Governors</b>	means the body of elected and appointed Governors authorised to be members of the Council of Governors to act in accordance with the Constitution.
<b>Director</b>	means a Non-Executive or Executive Director on the Board as the context permits. Director in relation to the Board does not include its Chairman.
<b>Director of Finance</b>	means the chief financial officer of the Trust.
<b>Executive Director</b>	means a member of the Board who holds an executive office of the Trust.
<b>Funds held on trust</b>	shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under Schedule 6, paragraph 8 of the 2006 Act as amended. Such funds may or may not be charitable.
<b>Governor</b>	means a person who is a member of the Council of Governors.
<b>Monitor/NHS Improvement</b>	means the body corporate known as Monitor/NHS Improvement, as provided by Section 61 of the 2012 Act.
<b>NHS Foundation Trust Code</b>	means the Code of Governance published by Monitor in July 2014, or such similar or further guidance as Monitor/NHS Improvement may publish from time to time.
<b>Nominated Officer</b>	means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
<b>Non-Executive Director</b>	means a member of the Board who is not an Officer of the Trust.
<b>Officer</b>	means employee of the Trust or any other person holding a paid appointment or office with the Trust.
<b>Senior Independent Director</b>	means a Non-Executive Director nominated to the role of Senior Independent Director.
<b>SFIs</b>	means Standing Financial Instructions.
<b>SOs</b>	means Standing Orders.
<b>Trust</b>	means the Poole Hospital NHS Foundation Trust.
<b>Vice-Chairman</b>	means the Non-Executive Director member appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason.

## SECTION B: STANDING ORDERS

### 1. INTRODUCTION

#### 1.1 Statutory Framework

- 1.1.1 The Trust is a public benefit corporation which was established under the 2006 Act on 1 November 2007.
- 1.1.2 The principal place of business of the Trust is Poole Hospital, Longfleet Road, Poole, BH15 2JB.
- 1.1.3 NHS Foundation Trusts are governed by a regulatory framework that confers the functions of the Trust and comprises the 2006 Act (as amended by the 2012 Act) and the Constitution ("Regulatory Framework"). The powers of the Trust are set out in the Regulatory Framework.
- 1.1.4 As a statutory body, the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable, as well as the Secretary of State for Health.
- 1.1.5 The Trust also has statutory powers under Section 256 of the 2006 Act to fund projects jointly planned with local authorities, voluntary organisations and other bodies.
- 1.1.6 The Constitution requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. This document, together with Standing Financial Instructions (SFIs) and Scheme of Delegation set out the responsibilities of individuals.
- 1.1.7 The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.

#### 1.2 NHS Framework

- 1.2.1 The Code of Accountability requires that, inter alia, the Board will draw up a schedule of decisions reserved to the Board, and ensures that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation).
- 1.2.2 The Freedom of Information Act 2000 sets out the requirements for public access to information.

#### 1.3 Delegation of Powers

- 1.3.1 The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (Standing Order 5) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 4 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). This document has effect as if incorporated into the Standing Orders.

**2. THE BOARD: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF DIRECTORS**

**2.1 Composition of the Membership of the Board**

2.1.1 In accordance with the Constitution the composition of the Board shall be:

- i) a non-executive Chairman;
- ii) six other Non-Executive Directors (one of which may be nominated as the Senior Independent Director);
- iii) six Executive Directors including:
  - the Chief Executive (Accounting Officer);
  - the Director of Finance
  - a medical or dental practitioner.
  - a registered nurse or midwife

2.1.2 The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors exceeds the number of Executive Directors.

**2.2 Appointment of Chairman and Directors**

2.2.1 The Chairman and Non-Executive Directors are appointed (and removed) by the Council of Governors.

2.2.2 The Chief Executive is appointed (and removed) by the Non-Executive Directors. The appointment (but not the removal) of the Chief Executive requires approval by the Council of Governors.

2.2.3 The Executive Directors are appointed (and removed) by a Committee whose members shall be the Chairman, the Non-Executive Directors and the Chief Executive.

**2.3 Terms of Office of the Directors**

2.3.1 The provisions governing the remuneration, allowances, term of office and other terms and conditions of office for the Chairman and Non Executive Directors is set out in Clause 28.1 of the Constitution.

2.3.1 The provisions governing the remuneration, allowances, term of office and other terms and conditions of office for the Chief Executive and other Executive Directors is set out in Clause 28.2 of the Constitution.

**2.4 Appointment and Powers of Vice-Chairman**

2.4.1 Subject to Standing Order 2.4.2 the Council of Governors may appoint a Non-Executive Director to be Vice-Chairman, for such period, not exceeding the remainder of his term as a director of the Trust, as they may specify on appointing him.

2.4.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman (in the Chairman's capacity as Chair of the Board and the Council of Governors). The Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chairman in accordance with the provisions of Standing Order 2.4.1.



## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

2.4.3 Where the Chairman of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairman owing to illness or any other cause, the Vice-Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform those duties, be taken to include references to the Vice-Chairman.

### 2.5 Joint Directors

2.5.1 Where more than one person is appointed jointly to a post of Director those persons shall count for the purpose of Standing Order 2.1 as one person.

2.5.2 Where the office of a Director of the Board is shared jointly by more than one person:

- i) either or both of those persons may attend or take part in meetings of the Board;
- ii) if both are present at a meeting they should cast one vote if they agree;
- iii) in the case of disagreements no vote should be cast;
- iv) the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 3.11 Quorum.

### 2.6 Role of Directors

2.6.1 The Board will function as a corporate decision-making body and Non-Executive and Executive Directors, will be full and equal Board members. The general duty of the Board of Directors and 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. Their role as members of the Board will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions. In exercising these functions the Board will consider guidance from the NHS Foundation Trust Code of Governance as amended or replaced from time to time.

#### 2.6.2 Executive Directors

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

#### 2.6.3 Chief Executive

The Chief Executive shall be responsible for the overall performance of the Trust. He/she is the **Accounting Officer** and shall be responsible for ensuring the discharge of obligations under any financial directions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum.

#### 2.6.4 Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its Directors and for the supervision of financial control and accounting systems. He/she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under any relevant financial directions.

#### 2.6.5 Non-Executive Directors

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as Directors of or when chairing a Committee of the Trust which has delegated powers.

### 2.6.6 Chairman

- i) The Chairman shall be responsible for the operation of the Board and chair all Board meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of appointment, the Constitution and with these Standing Orders.
- ii) The Chairman shall take responsibility either directly or indirectly for the Non-Executive Director's induction, their portfolios of interests and assignments, and their performance.
- iii) The Chairman shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

## 2.7 Corporate Role of the Board

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

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

2.7.3 The powers of the Trust shall be exercised by the Board meeting in public or private session as provided for in Standing Orders 3.17.

## 2.8 Schedule of Matters Reserved to the Board and Scheme of Delegation

2.8.1 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the 'Scheme of Reservation and Delegation of Powers'. Those powers which it has delegated to Officers and other bodies are also contained in the Scheme of Reservation and Delegation of Powers.

## 2.9 Lead Roles for Directors

2.9.1 The Chairman will ensure that the designation of lead roles or appointments of Board Directors to such lead roles as required by the Department of Health or as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Member with responsibilities for Infection Control or Child Protection Services etc.).

## 3. MEETINGS OF THE TRUST

### 3.1 Calling Meetings

3.1.1 Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.

3.1.2 The Chairman of the Trust may call a meeting of the Board at any time.

3.1.3 One third or more Directors of the Board may requisition a meeting in writing. If the

## **ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS**

Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

### **3.2 Notice of Meetings and the Business to be Transacted**

- 3.2.1 Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every Director, or sent by post to the usual place of residence of each Director, so as to be available to Directors at least three clear days before the meeting. The notice shall be signed by the Chairman or by an officer authorised by the Chairman to sign on their behalf. Want of service of such a notice on any Director shall not affect the validity of a meeting.
- 3.2.2 In the case of a meeting called by Directors in default of the Chairman calling the meeting, the notice shall be signed by those Directors.
- 3.2.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.6.
- 3.2.4 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.
- 3.2.5 In the event that a meeting of the Board is to be held in public pursuant to standing order 3.17 a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting.

### **3.3 Agenda and Supporting Papers**

- 3.3.1 The Agenda will be sent to Directors 6 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.
- 3.3.2 Before holding a meeting, the Board of Directors will send a copy of the agenda (but not supporting papers) to the Council of Governors.

### **3.4 Petitions**

- 3.4.1 Where a petition has been received by the Trust the Chairman shall include the petition as an item for the agenda of the next Board meeting.

### **3.5 Notice of Motion**

- 3.5.1 Subject to the provision of Standing Orders 3.7 'Motions: Procedure at and during a meeting' and 3.8 'Motions to rescind a resolution', a Director of the Board wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chairman.
- 3.5.2 The notice shall be delivered at least 10 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

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### 3.6 Emergency Motions

- 3.6.1 Subject to the agreement of the Chairman, and subject also to the provision of Standing Order 3.7 'Motions: Procedure at and during a meeting', a Director of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

### 3.7 Motions: Procedure at and During a Meeting

#### 3.7.1 Who may propose

A motion may be proposed by the Chairman of the meeting or any Director present. It must also be seconded by another Director.

#### 3.7.2 Contents of motions

The Chairman may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Board;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

#### 3.7.3 Amendments to motions

- i) A motion for amendment shall not be discussed unless it has been proposed and seconded.
- ii) Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.
- iii) If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

#### 3.7.4 Rights of reply to motions

- i) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

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ii) Substantive/original motion

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

### 3.7.5 Withdrawing a motion

A motion, or an amendment to a motion, may be withdrawn.

### 3.7.6 Motions once under debate

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a Director be not further heard;
- a motion to exclude the public, including the press (see Standing Order 3.17).

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

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

## 3.8 Motion to Rescind a Resolution

3.8.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Directors, and before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

3.8.2 When any such motion has been dealt with by the Trust Board it shall not be competent for any member other than the Chairman to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive for recommendation.

## 3.9 Chairman of Meeting

3.9.1 At any meeting of the Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice-Chairman (if one is appointed), if present, shall preside.

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

3.9.2 If the Chairman and Vice-Chairman are absent, such Non-Executive Director as the Directors present shall choose shall preside.

### 3.10 Chairman's Ruling

3.10.1 The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

### 3.11 Quorum

3.11.1 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) is present.

3.11.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum 3.11.3. If the Chairman or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see Standing Order 6) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

### 3.12 Voting

3.12.1 Save as provided in Standing Orders 3.13 (Suspension of Standing Orders) and 3.14 (Variation and Amendment of Standing Orders), every question put to a vote at a meeting shall be determined by a majority of the votes of Directors present and voting on the question. In the case of an equal vote, the person presiding (i.e.: the Chairman of the meeting) shall have a second, and casting vote.

3.12.2 At the discretion of the Chairman all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

3.12.3 If at least one third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).

3.12.4 If a Director so requests, their vote shall be recorded by name.

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

3.12.6 An Officer who has been formally appointed 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.

3.12.7 An Officer attending the Board meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.12.8 For the voting rules relating to joint members see Standing Order 2.5.

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

### 3.13 Suspension of Standing Orders

- 3.13.1 Except where this would contravene any provision in the Regulatory Framework, or the rules relating to the Quorum (Standing Order 3.11), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the Directors of the Board are present (including at least one Executive Director and one Non-Executive Director) and that at least two-thirds of those Directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board minutes.
- 3.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Directors of the Trust.
- 3.13.3 No formal business may be transacted while Standing Orders are suspended.
- 3.13.4 The Audit and Governance Committee shall review every decision to suspend Standing Orders.

### 3.14 Variation and Amendment of Standing Orders

- 3.14.1 These Standing Orders shall not be varied except in accordance with Annex 8, Paragraph 7 (Amendment of Constitution).

### 3.15 Record of Attendance

- 3.15.1 The names of the Chairman and Directors present at the meeting shall be recorded.

### 3.16 Minutes

- 3.16.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.
- 3.16.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.
- 3.16.2 As soon as practicable after holding a meeting, the Board of Directors shall send a copy of the minutes of the meeting to the Council of Governors.

### 3.17 Admission of Public and the Press

- 3.17.1 Meetings of the Board of Directors shall be open to members of the public unless and to the extent that the Board of Directors has resolved that any members of the public shall be excluded on the grounds that:

3.17.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

3.17.2 for the reasons stated in the resolution and arising from the nature of the business and proceedings that the Board considers are special reasons for excluding the public from the meeting in accordance with this Constitution.

#### 3.17.2 General disturbances

In the event that the public and press are admitted to all or part of a Board meeting pursuant to Standing Order 3.17.1 above, the Chairman (or Vice-Chairman if one has

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

been appointed) or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust's business shall be conducted without interruption and disruption, and the public will be required to withdraw upon the Trust Board resolving that in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete its business without the presence of the public.

### 3.17.3 Business proposed to be transacted when the press and public have been excluded from a meeting

- i) Matters to be dealt with by the Board following the exclusion of representatives of the press, and other members of the public, as provided in (1) and (2) above, shall be confidential to the Directors of the Board.
- ii) Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

### 3.17.4 Use of mechanical or electrical equipment for recording or transmission of meetings

Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Board or Committee thereof. Such permission shall be granted only upon resolution of the Trust.

## 3.18 Observers at Trust Meetings

- 3.18.1 The Trust will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board meetings and may change, alter or vary these terms and conditions as it deems fit.

## 4. APPOINTMENT OF COMMITTEES AND SUB COMMITTEES

### 4.1 Appointment of Committees

- 4.1.1 Subject to the Regulatory Framework, the Board may appoint committees of the Trust subject to such restriction and conditions as the Board thinks fit.
- 4.1.2 The Trust shall determine the membership and terms of reference of Committees and sub-committees and shall if it requires to, receive and consider reports of such Committees.

### 4.2 Joint Committees

- 4.2.1 Joint Committees may be appointed by the Trust by joining together with one or more other trusts consisting of, wholly or partly of the Chairman and Directors of the Trust or other health service bodies, or wholly of persons who are not Directors of the Trust or other health bodies in question.
- 4.2.2 Any Committee or joint Committee appointed under this Standing Order may, subject to the Constitution, the Trust or other health bodies in question, appoint sub-



## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

committees consisting wholly or partly of Directors of the Committees or joint Committee (whether or not they are Directors of the Trust or health bodies in question) or wholly of persons who are not Directors of the Trust or health bodies in question or the Committee of the Trust or health bodies in question.

### 4.3 Applicability of Standing Orders and Standing Financial Instructions to Committees

- 4.3.1 The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any Committees established by the Trust. In which case the term “Chairman” is to be read as a reference to the Chairman of other committee as the context permits, and the term “member” is to be read as a reference to a member of other Committee also as the context permits. (There is no requirement to hold meetings of Committees established by the Trust in public).

### 4.4 Terms of Reference

- 4.4.1 Each such Committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any legislation and regulation, or any guidance issued by NHS Improvement.

### 4.5 Delegation of Powers by Committees to Sub-Committees

- 4.5.1 Where Committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.

### 4.6 Approval of Appointments to Committees

- 4.6.1 The Board shall approve the appointments to each of the Committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a Committee the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

### 4.7 Appointments for Statutory Functions

- 4.7.1 Where the Board is required to appoint persons to a Committee and/or to undertake statutory functions and where such appointments are to operate independently of the Board such appointment shall be made in accordance with any applicable regulations and directions.

### 4.8 Committees Established by the Board

- 4.8.1 The Committees, sub-committees, and joint-committees established by the Board are:

i) Audit and Governance Committee

As laid down in the Constitution and the 2006 Act, a committee of Non-Executive Directors will be established and constituted to provide the Board

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

with an independent and objective review on its financial systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The Audit and Governance Terms of Reference will be approved by the Board and reviewed on a periodic basis.

ii) Finance and Investment Committee

The Committee is responsible for scrutinising the detailed financial reports and making recommendations to ensure the robust use of financial resources. The Committee will review the substance of the Annual Plan and revenue and capital budgets.

iii) Remuneration Committee

As laid down in the Constitution and the 2006 Act, a committee of Non-Executive Directors will be established to decide the remuneration and allowances of, and other terms and conditions of the Executive Directors. The Remuneration Committee Terms of Reference will be approved by the Board and reviewed on a periodic basis.

iv) Appointment Committee

As laid down in the Constitution and the 2006 Act, it is for a committee consisting of the Chairman, the Chief Executive and the Non-Executive Directors to appoint or remove the other Executive Directors. The Terms of Reference of the Appointment Committee will be approved and reviewed by the Board on a periodic basis.

v) Other Committees

The Board may also establish such other Committees as required to discharge the Trust's responsibilities

- 4.8.2 The Board of Directors may elect to change the Committees, sub-Committees and joint Committees of the Board of Directors, as necessary, without requirement to amend their Standing Orders.

## 5. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

### 5.1 Delegation of Functions to Committees, Officers or Other Bodies

- 5.1.1 Subject to the Regulatory Framework and such guidance as may be given by NHS Improvement, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order 4, or by an officer of the Trust, or by another body as defined in Standing Order 5.1.2 below, in each case subject to such restrictions and conditions as the Trust thinks fit.
- 5.1.2 Where a function is delegated to another Trust, then that Trust or health service body exercises the function in its own right; the receiving Trust has responsibility to ensure that the proper delegation of the function is in place. In other situations, i.e. delegation to committees, sub-committees or officers, the Trust delegating the function retains full responsibility.

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### **5.2 Emergency Powers and Urgent Decisions**

- 5.2.1 The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 2.8) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board for formal ratification.

### **5.3 Delegation to Committees**

- 5.3.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by other 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 executive powers shall be approved by the Board in respect of its sub-committees.
- 5.3.2 When the Board is not meeting as the Trust in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Trust in public session.
- 5.3.3 The Trust shall have a Hospital Executive Group (with supporting sub-groups as deemed necessary by the Chief Executive) with delegated responsibility of the Chief Executive who may choose to review the structure at any stage.

### **5.4 Delegation to Officers**

- 5.4.1 Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committee or sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Trust.
- 5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.
- 5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with the Regulatory Framework and any statutory or Department of Health requirements or provisions required by NHS Improvement. Outside these requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

### **5.5 Schedule of Matters Reserved to the Trust and Scheme of Delegation of Powers**

- 5.5.1 The Board shall comply with the arrangements set out in the “Schedule of Matters Reserved to the Board” and “Scheme of Delegation”.

### **5.6 Duty to Report Non-Compliance with Standing Orders and Standing Financial Instructions**

- 5.6.1 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Directors of the Trust Board, Officers and staff have a duty to

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

### 6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

#### 6.1 Policy Statements: General Principles

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

#### 6.2 Specific Policy Statements

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

- i) the Standards of Business Conduct and Conflicts of Interest Policy for Poole Hospital NHS Foundation Trust staff;
- ii) the staff Disciplinary and Appeals Procedures adopted by the Trust.

#### 6.3 Standing Financial Instructions

6.3.1 Standing Financial Instructions will be adopted by the Board in accordance with the financial regulations.

#### 6.4 Specific Guidance

6.4.1 Notwithstanding the application of Standing Order 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other guidance issued by NHS Improvement:

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

### 7. DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS AND SENIOR MANAGERS UNDER THESE STANDING ORDERS

#### 7.1 Declaration of Interests

##### 7.1.1 Requirements for Declaring Interests and applicability to Board Members

The Constitution and the 2006 Act requires Board Members who have a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Board of Directors, he shall declare it. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment.

##### 7.1.2 Interests which are relevant and material

- (i) Interests which should be regarded as "relevant and material" are:

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

- a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
  - b) ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
  - c) majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
  - d) a position of Authority in a charity or voluntary organisation in the field of health and social care;
  - e) any connection with a voluntary or other organisation contracting for NHS services;
  - f) research funding/grants that may be received by an individual or their department;
  - g) interests in pooled funds that are under separate management.
- (ii) Any Director of the Trust Board who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in Standing Order 7.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Board Director shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

### 7.1.3 Advice on interests

- i) If Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman or with the Company Secretary.
- ii) Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

### 7.1.4 Recording of interests in Board minutes

- i) At the time Board Directors' interests are declared, they should be recorded in the Board minutes.
- ii) Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.

### 7.1.5 Publication of declared interests in Annual Report

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

### 7.1.6 Conflicts of interest which arise during the course of a meeting

During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue. (See overlap with Standing Order 7.3)

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### 7.1.7 Definition of a conflict of interest

For the sake of clarity, a conflict of interest is defined as a set of circumstances by which a reasonable person would consider that an individual's ability to apply judgement or act, in the context of delivering, commissioning, or assuring taxpayer funded health and care services is, or could be, impaired or influenced by the interest they hold.

## 7.2 Register of Interests

7.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee members. In particular the Register will include details of all directorships and other relevant and material interests (as defined in Standing Order 7.1.2) which have been declared by both Executive and Non-Executive Directors.

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

7.2.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

## 7.3 Exclusion of Chairman and Directors in Proceedings on Account of Pecuniary Interest

### 7.3.1 Definition of terms used in interpreting 'Pecuniary' interest

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

- (i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- (ii) "contract" shall include any proposed contract or other course of dealing;
- (iii) "Pecuniary interest"

Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:-

- a) he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
  - b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- iv) Exception to Pecuniary interests

A person shall not be regarded as having a pecuniary interest in any contract if:-

- a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

such person appears as a member, or

- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where standing order (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.2 (ii).

### 7.3.2 Exclusion in proceedings of the Board

- i) Subject to the following provisions of this Standing Order, if the Chairman or a Director of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- ii) The Board may exclude the Chairman or a member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under consideration.
- iii) Any remuneration, compensation or allowance payable to the Chairman or a Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- iv) This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Trust and applies to a member of any such committee or sub-committee (whether or not he/she is also a member of the Trust) as it applies to a member of the Trust.

### 7.3.3 **NOT USED**

## 7.4 **Standards of Business Conduct**

### 7.4.1 Trust policy and national guidance

All Trust staff and Director of must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy as amended from time to time and the national guidance contained in 'Managing Conflicts of Interest in the NHS' (NHS England) (see Standing Order 6.2).

### 7.4.2 Interest of officers in contracts

- i) Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in Standing Order 7.3) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

giving notice in writing of such fact to the Chief Executive or Trust's Company Secretary as soon as practicable.

- ii) An Officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- iii) The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

### 7.4.3 Canvassing of and recommendations by directors in relation to appointments

- i) Canvassing of Directors of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- ii) Directors of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

### 7.4.4 Relatives of members or officers

- i) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- ii) The Chairman and every Director and Officer of the Trust shall disclose to the Trust Board any relationship between himself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- iii) On appointment, Director (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- iv) Where the relationship to a member of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and members in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.

## 8. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

### 8.1 Custody of Seal

- 8.1.1 The common seal of the Trust shall be kept by the Company Secretary in a secure place.

### 8.2 Sealing of Documents



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8.2.1 Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Executive Directors or one Executive Director and either the Chairman or Company Secretary duly authorised by a resolution of the Board, not also from the originating department, and shall be attested by them.

### 8.3 Register of Sealing

8.3.1 An entry of every sealing shall be made and numbered consecutively by the Company Secretary. A report of all sealing shall be made to the Board of Directors annually.

8.3.2 The seal should be used to execute deeds (eg conveyances of land) or where otherwise required by law.

### 8.4 Signature of Documents

8.4.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

8.4.2 The Chief Executive, or the Director of Finance or other Executive Directors shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or any Committee or sub-committee to which the Board of Directors has delegated appropriate authority.

## 9. MISCELLANEOUS (see overlap with SFI No.10.3)

### 9.1 Joint Finance Arrangements

9.1.1 The Board may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under Section 256 of the 2006 Act. The Board may confirm contracts to transfer money from the NHS to the voluntary sector or the health related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services, using its powers under Section 256 of the 2006 Act.

## 10. COMPANY SECRETARY

10.1 The Chairman and the Chief Executive may jointly appoint or remove (if they so choose) a Company Secretary who is to be employed by the Trust.

10.2 The Company Secretary shall ensure the availability of a secretariat which will:

10.2.1 provide a secretary to the Council of Governors and the Board of Directors, and any relevant sub-Committees;

10.2.2 attend all meetings of the Council of Governors and the Board of Directors, and keep the minutes of those meetings and the attendance records;

10.2.3 keep the register of members and other registers as are required by the Constitution to be kept; and

10.2.4 any other functions as may be set out in the Company Secretary's terms of reference

## ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS

from time to time.

### 11. SENIOR INDEPENDENT DIRECTOR

- 11.1 The Board of Directors may appoint one of the independent Non-Executive Directors to be the Senior Independent Director following consultation with the Council of Governors.
- 11.2 The Board of Directors will use reasonable endeavours to ensure that the role and identity of the Senior Independent Director is made known to the Members and the Council of Governors.
- 11.3. The role of the Senior Independent Director is attached at Appendix A to this Annex 7.

### APPENDIX A

#### ROLE OF THE SENIOR INDEPENDENT DIRECTOR

The Senior Independent Director will be an independent Non-Executive Director of the Board of Directors and may be the Vice-Chairman.

The Senior Independent Director's role will be:

- i) to be available to Governors and Members if they have concerns about the performance of the Board of Directors, compliance with the Regulatory Framework or welfare of the Trust which contact through the normal channels of Chairman or Chief Executive has failed to resolve or for which such contact is inappropriate;
- ii) to maintain sufficient contact with Governors to understand their issues and concerns;
- iii) In accordance with a process to be agreed between the Chair and Council of Governors, to be involved in the process for evaluating the performance of the Chair;
- iv) to lead a meeting of the Non-Executive Directors at least annually without the Chair to evaluate the Chair's performance, as part of the process agreed with the Council of Governors for appraising the Chair;
- v) to liaise with the Chair, and Company Secretary in relation to setting the agenda of the Council of Governors.

**ANNEX 7 – STANDING ORDERS: BOARD OF DIRECTORS**

## **CONSTITUTION**

## **ANNEX 8**

## **FURTHER PROVISIONS**



## FURTHER PROVISIONS

### 1. ELIGIBILITY FOR MEMBERSHIP

- 1.1 An individual shall be eligible for Membership of the Trust provided:
- i) he is at least twelve years of age at the date of his application or invitation to become a Member (as the case may be); and
  - ii) he is otherwise eligible for Membership pursuant of the terms of this Constitution.
- 1.2 For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if;
- i) his name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
  - ii) the Trust is otherwise satisfied that the individual lives in the said area.
- 1.3 An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if he ceases to live in the area of the Public Constituency of which he is a Member save as may otherwise be provided in Clause 1 of this Annex.
- 1.4 Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which he is a Member he shall forthwith advise the Trust that he is no longer eligible to continue as a Member and the Trust shall forthwith remove his name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than fourteen days notice of its intention to do so.
- 1.5 Where a Member ceases to live temporarily in the area of the Public Constituency of which he is a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in the area of that Public Constituency of which he is a Member or will live in some other part of the Area of the Trust in which case the provisions of Clause 1.4 of this Annex shall apply as appropriate.
- 1.6 A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of Clause 7 of the Constitution and of Annex 2.
- 1.7 Where an individual is a Member by virtue of their eligibility to be a Member of a Staff Class and they cease to be eligible for membership of that Staff Class but are eligible for membership of some other Staff Class then the Trust may give notice to that Member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

## 2. APPLICATION FOR MEMBERSHIP

- 2.1 An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a member of a Staff Class of the Staff Constituency in accordance with Clause 7 of the Constitution.
- 2.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply:
- i) the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;
  - ii) upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonable practicable and in any event within ten working days of receipt of the duly completed form consider the same;
  - iii) unless the applicant is ineligible for Membership or is disqualified from Membership, the Trust shall cause his name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;
  - iv) upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a Member;
  - v) the information to be included in the Trust's Register of Members shall include the following details relating to that Member:
    - a) his full name and title;
    - b) his date of birth;
    - c) his full postal address;
    - d) his home telephone number (if any);
    - e) his email address (if any);
    - f) the constituency of which he is a Member;
    - g) the date upon which he became a Member;
    - h) his gender and ethnicity.
- 2.3 Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:
- i) the Trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a Member of the Staff Class of the Staff Constituency relevant to him before inviting him to become a Member of the Trust and that it has all the information needed to complete the Register of Members in accordance with Clause 2.2 (v) of this Annex;



- ii) the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to Clause 5 of the Constitution and if necessary shall request the individual to provide such further information, if any, as it may need to complete the necessary entry in the Register of Members;
  - iii) unless the individual has within fourteen days of the date upon which the Trust dispatches its invitation to him to become a Member advised the Trust that he does not wish to become a Member, the Trust shall thereupon enter that individual's name on the Register of Members and he shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to Clause 2.2 (v) of this Annex to enable it to complete the relevant entry in the Register of Members;
  - iv) if the individual has failed to provide the information requested by the Trust within fourteen days of being invited by the Trust to provide it in accordance with Clause 2.2 (v) of this Annex, the Trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the Register of Members.
- 2.4 No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.
- 2.5 For the avoidance of doubt, an individual shall become a Member on the date upon which his name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which his name is removed from the Register of Members as provided for in this Constitution.
- 2.6 The Trust shall procure that the Register of Members and all other Registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the Register of Members in particular is reviewed and updated as appropriate and no less often than every twenty eight days.

### 3. TERMINATION OF MEMBERSHIP

- 3.1 A Member shall cease to be a Member if:
- i) he resigns by notice to the Company Secretary;
  - ii) he dies;
  - iii) he is expelled from Membership under this Constitution;
  - iv) if it appears to the Company Secretary that he no longer wishes to be a Member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, he fails to establish that he wishes to continue to be a Member of the Trust.
- 3.2 A Member may be expelled by a resolution approved by not less than two-thirds of the Council of Governors present and voting at a General Meeting. The following procedure is to be adopted:

- i) any Member may complain to the Company Secretary that another Member has acted in a way detrimental to the interests of the Trust.
  - ii) 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 General Meeting of the Council of Governors.
  - iii) if a resolution to expel a Member is to be considered at a General Meeting of the Council of Governor, 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.
  - iv) at the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
  - v) if the Member complained of fails to attend the meeting without reasonable cause the meeting may proceed in his absence.
- 3.3 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.
- 3.4 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 General Meeting.

#### 4. MEMBERS MEETINGS

- 4.1 The Trust shall hold an Annual Members' Meeting within eight months of the end of each Financial Year of the Trust.
- 4.2 Any Members' meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings". Annual Members' Meeting and Special Members' Meetings are referred to in this Paragraph 4 as "Members' Meetings".
- 4.3 Members' Meetings shall be open to all Members of the Trust, members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors and to members of the public. The Trust may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend a Members' Meeting.
- 4.4 All Members' Meetings are to be convened by the Company Secretary by order of the Board of Directors.
- 4.5 The Trust shall make provision for the Members' Meeting to be held at Poole Hospital or a venue close to Poole Hospital.
- 4.6 The Board of Directors shall present at the Annual Members' Meeting to the Members:

- i) a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such Membership;
- ii) the progress of the Membership strategy;
- iii) any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors;
- iv) the results of the election and appointment of Governors any other reports or documentation it considers necessary or otherwise required by Monitor or the 2006 Act (to be commenced by the Trust Secretary).

4.7 The Trust shall give notice of all Members' Meetings:

- i) by notice in writing to all Members;
- ii) by notice prominently displayed at the Trust's main address and at all of the Trust's principal places of business;
- iii) by notice on the Trust's website at least fourteen clear days before the date of the meeting;
- iv) to the Council of Governors and the Board of Directors, and to the Trust's auditors stating whether the meeting is an Annual or Special Members' Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting.

4.8 The Chairman or in his absence the Vice Chairman shall preside at all Members' Meetings of the Trust. If neither the Chairman nor the Vice Chairman is present, the Governor present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act that person shall be Chairman. If no Governor is willing to act as Chairman or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chairman.

## 5. BOARD OF DIRECTORS: DISQUALIFICATION

5.1 In addition to the grounds of disqualification set out in Clause 25 of the Constitution, a person may also not be or continue as a Director of the Trust if:

- i) in the case of a Non-Executive Director, he no longer satisfies relevant appointment requirements;
- ii) he is a person whose tenure of office as a Chairman or as a Member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
- iii) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a health service body;
- iv) information revealed by a Disclosure and Barring Service check is such that it would be inappropriate for him to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;

v) in the case of an Executive Director, he is no longer employed by the Trust.

## 6. GOVERNORS AND DIRECTORS: COMMUNICATION AND CONFLICT

### Summary

6.1 This Clause 6 of this Annex describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal and formal communications between the Council of Governors and the Board of Directors.

### Informal Communications

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

6.3 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including:

- i) participation of the Board of Directors in the induction, orientation and training of Governors;
- ii) development of special interest relationships between Non-Executive Directors and Governors;
- iii) discussions between Governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer;
- iv) involvement in membership recruitment and briefings at public events organised by the Trust.

### Formal Communication

6.4 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

6.5 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:

- i) specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;
- ii) any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman but if the Chairman declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve his request to do so. The Chairman shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;
- iii) joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate as determined by the Chairman

(in his capacity as the Chairman of both the Board of Directors and the Council of Governors.

- 6.6 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 6.7 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:
- i) the Board of Directors proposals for the Strategic Direction and the Annual Business Plan;
  - ii) the Board of Directors' proposals for developments;
  - iii) Trust performance;
  - iv) involvement in service reviews and evaluation relating to the Trust's services; and
  - v) proposed changes, plans and developments for the Trust other than may be covered by Clause 6.6 of this Annex.
- 6.8 The Board of Directors shall also present to the Council of Governors the Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.
- 6.9 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:
- i) attendance by the Board of Directors at a meeting of the Council of Governors;
  - ii) provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors;
  - ii) inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
  - iv) reporting the views of the Council of Governors to the Board of Directors through the Chairman or Vice Chairman.

#### **Other Communication**

- 6.10 The Governors are welcomed to Part 1 meetings of the Board of Directors. There is an item on each Part 1 agenda "Questions from the Governors". These are requested by the Chairman, enabling individual governors to put questions to the Board. Verbal responses will be supplied as far as reasonable at the time of the meeting and reported in a subsequent edition of the Governors' e-mail. The Chairman has discretion to manage this item in the light of other Board business. It is also a matter for Governors as to whether the question is for a formal Board meeting or can be raised through the informal route. Board time is set aside for informal discussion between individual Governors and Board Members prior to commencement of the Part 1 meetings. Shortly following a Board of Directors

meeting a briefing meeting takes place with the Chairman and Governors with the purpose of informing the Governors as far as reasonable about the discussions conducted under Part 2 of the Board of Directors meetings. Where able, Executive and Non-executive Directors are to attend these briefings to support the Chairman and impart further information if required. The Chairmen of the sub-committees of the Board of Directors are also to attend annually to discuss the work of the sub-committees to assist the Council of Governors in their duty to hold the non-executive directors individually and collectively to account for the performance of the Board.

## Disputes

- 6.11 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.
- 6.12 The Chief Executive (or his nominated representative) shall:
- i) review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;
  - ii) then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and
  - iii) communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.
- 6.13 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chairman and Chief Executive of the Trust, who shall use their best endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen but the Chairman and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.
- 6.14 Notwithstanding paragraph 6.12 and the provisions of Annex 5 paragraph 3, an independent assessor may be appointed (as if it had been a possible removal pursuant to and using the process set out in Annex 5 paragraph 3) to consider the evidence and advise on whether this justified disqualification under the terms of the Constitution.
- 6.15 In the event that the independent assessor appointed pursuant to paragraph 6.13 advises that the evidence justifies the disqualification, the original decision to disqualify shall stand. If however the independent assessor advises that there is at least reasonable doubt that the evidence justified disqualification, the matter shall be put to the Council of Governors to decide whether to uphold the disqualification or not (such decision requiring support of not less than three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose). If the Council of Governors does not uphold the disqualification, then such disqualification shall not stand and the Governor subject to the proposed disqualification shall remain in office.

- 6.16 Pending a decision of the independent assessor or the Council of Governors as referred to in paragraph 6.13, the Governor shall (without prejudice to the outcome of such review process) not be able to exercise any right or powers of a Governor and shall follow any instruction from the Chairman e.g. as to access to Trust premises or contact with Trust officers or staff or other Governors as the Chairman shall deem appropriate in the interests of the health and safety of any persons or the security or reputation of the Trust.

## 7. AMENDMENT OF CONSTITUTION

- 7.1 The Trust may make amendments to this Constitution only if:
- 7.1.1 more than half of the members of the Council of Governors voting approve the amendments, and
  - 7.1.2 more than half of the members of the Board of Directors voting approve the amendments.
- 7.2 Amendments made under paragraph 7.1 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.
- 7.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise in respect to the role that the Council of Governors has as part of the Trust):
- 7.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 7.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 7.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 7.5 Amendments by the Trust of its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement'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.

## 8. INDEMNITY

- 8.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Council or Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Resolution Special Health Authority to cover such costs.

## 9. VALIDITY OF ACTIONS

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