

**FOUNDATION
TRUST
CONSTITUTION**

<u>ISSUE DATE</u>	February 2013
<u>REVIEW DATE</u>	Subject to Board of Director and Council of Governor Agreement
<u>LEAD OFFICER(S)</u>	Chief Executive and Chairman

PROPOSED CONSTITUTION

**BASED ON MONITOR'S MODEL CORE CONSTITUTION FOR
NHS FOUNDATION TRUSTS, SEPTEMBER 2008**

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1. Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

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

The 2006 Act is the National Health Service Act 2006.

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

Constitution means this constitution and all annexes to it.

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

Terms of Authorisation are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

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

2. Name

The name of the Foundation Trust is South Tees Hospitals NHS Foundation Trust (the trust).

3. Principal purpose

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

3.2 The trust does not 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 great than its total income from the provision of goods and services for any other purposes.

3.3 The trust may provide goods and services for any purposes related to –

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

3.3.2 the promotion and protection of public health.

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

4. Powers

- 4.1 The powers of the trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 4.2 The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

5. Membership and constituencies

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

- 5.1 a public constituency
- 5.2 a staff constituency or
- 5.3 a patients' constituency

6. Application for membership

An individual who is eligible to become a member of the trust may do so on application to the trust.

7. Public constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

8. Staff constituency

- 8.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:
 - 8.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months, or
 - 8.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.

- 8.2 Individuals who exercise functions for the purpose of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have a contract of employment for a period of at least 12 months (see annex 2)
- 8.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 This section is intentionally blank (as per model constitution).
- 8.5 The minimum number of members in the Staff Constituency is specified in Annex 2.

9. Automatic membership by default

- 9.1 An individual who is:
 - 9.1.1 eligible to become a member of the Staff Constituency, and
 - 9.2.2 invited by the trust to become a member of the Staff Constituencyshall become a member of the trust as a member of the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.

10 Patients' Constituency

- 10.1 An individual who has, within the period specified below, attended any of the trust's hospitals as either a patient or as the carer of a patient may become a member of the trust, provided that he lives outside of the 3 areas comprising the Public Constituency.
- 10.2 The period referred to above shall be the period of ten years immediately preceding the date of an application by the patient or carer to become a member of the trust.
- 10.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Patients' Constituency.
- 10.4 This section is intentionally blank
- 10.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patient Constituency.

10.6 The minimum number of members in the Patients' Constituency is specified in Annex 3.

11. Restriction on membership

11.1 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.

11.2 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.

11.3 An individual must be at least 16 years old to become a member of the trust.

11.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 – Further provisions.

12. Council of Governors - composition

12.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

12.2 The composition of the Council of Governors is specified in Annex 4.

12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

13. Council of Governors – election of Governors

13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

13.2 The Model Election Rules, as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust's Authorisation are attached at Annex 5.

13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of the constitution for the purposes of paragraph 41 of the constitution.

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

14. Council of Governors - tenure

- 14.1 An elected governor may hold office for a period of up to 3 years.
- 14.2 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.
- 14.3 An elected governor shall be eligible for re-election at the end of his term and shall serve no more than three consecutive terms of office, resulting in a maximum of 9 years' tenure.
- 14.4 An appointed governor may hold office for a period of up to 3 years.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of his term and shall serve no more than three consecutive terms of office, resulting in a maximum of 9 years' tenure.

15. Council of Governors – disqualification and removal

- 15.1 The following may not become or continue as a member of the Board of Governors:
 - 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 15.1.2 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;
 - 15.1.3 a person who within the preceding five years has been convicted 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.
- 15.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.
- 15.4 Where a governor becomes ineligible to continue holding the office of governor, and thus disqualified, he must notify the Trust Secretary in writing. Upon receipt of this notification the governor's tenure of office will be terminated.

If it comes to the notice of the Trust Secretary that a governor is disqualified, the governor will be immediately declared disqualified and notified to this effect.

16. Council of Governors – meetings of governors

16.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 24 below), shall preside at meetings of the Council of Governors.

16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting (whether for the whole or part of such meeting) for special reasons as determined by the Chairman in conjunction with the Council of Governors which may include, but are not limited to, the following reasons:

16.2.1 Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

16.2.2 There are special reasons stated in the resolution and arising from the nature of the business of the proceedings;

16.2.3 The Chairman may exclude any members of the public from a meeting of the Council of Governors if they are interfering with or preventing proper conduct of the meeting.

16.2.4 The Council may invite the Chief Executive of the Trust, and other appropriate Directors, to attend any meeting of the Council of Governors and enable members of the Council of Governors to raise questions about the Trust affairs.

17. Council of Governors – standing orders

17.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

18. Council of Governors – conflicts of interest of governors

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

19. Council of Governors – travel expenses

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

20. Council of Governors – further provisions

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

21. Board of Directors – composition

21.1 The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

21.2 The Board of Directors is to comprise:

21.2.1 a non-executive Chairman

21.2.2 between 5 - 8 other non executive directors; and

21.2.3 between 5 - 8 executive directors.

21.3 The number of Directors may be increased within the range of 20.2.2 and 20.2.3 above, with the approval of the Board, provided always at least half the Board, excluding the Chairman, comprises Non-executive Directors determined by the Board to be independent.

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

21.5 The Chief Executive shall be the Accounting Officer.

21.6 One of the executive directors shall be the finance director.

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

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

22. Board of Directors – qualification for appointment as a non-executive director

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

22.1 he is a member of the Public Constituency, or

22.2 he is a member of the Patients' Constituency, or

22.3 where any of the Trust's hospitals include a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

22.4 he is not disqualified by virtue of paragraph 27 below.

23. Board of Directors – appointment and removal of chairman and other non executive directors

23.1 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.

23.2 Removal of the chairman or another non executive director shall require the approval of three-quarters of the members of the Council of Governors.

23.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 23 below.

24. Board of Directors – appointment of initial chairman and initial other non-executive directors

24.1 The Chairman of the applicant NHS Trust shall be appointed as the initial Chairman of the trust if he wishes to be appointed.

24.2 The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

24.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 21 above (other than disqualification by virtue of paragraph 27 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

24.4 An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

25. Board of Directors – appointment of deputy chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

26. Board of Directors – appointment and removal of the Chief Executive and other executive directors

- 26.1 The non-executive directors shall appoint or remove the Chief Executive.
- 26.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 26.3 The initial Chief Executive is to be appointed in accordance with paragraph 26 below.
- 26.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

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

- 27.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if he wishes to be appointed.
- 27.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

28. Board of Directors – disqualification

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

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

29. Board of Directors – standing orders

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

30. Board of Directors – conflicts of interest of directors

If a director has a pecuniary, personal or family interest, whether the 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 Board of Directors, the director shall disclose that interest to the members of

the Board of Directors as soon as he becomes aware of it. 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.

31. Board of Directors – remuneration and terms of office

31.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

31.2 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.

32. Registers

The trust shall have:

32.1 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;

32.2 a register of members of the Council of Governors;

32.3 a register of interests of governors;

32.4 a register of directors; and

32.5 a register of interests of the directors.

33. Admission to and removal from the registers

33.1 The Trust's Secretary will be responsible for keeping the Register of Members up to date; he/she will add the name of new members to the Register and will remove the name of any member who ceases to be entitled to be a member under the terms of the Constitution.

33.2 It is the responsibility of members to ensure that they remain eligible to continue being a member of the trust rather than the trust's responsibility to monitor the eligibility of its members. However, if the trust is on notice that a member may be disqualified from membership, it shall carry out all reasonable enquiries to establish if this is the case.

34. Registers – inspection and copies

34.1 The trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the

circumstances set out below or as otherwise prescribed by the regulations.

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

34.2.1 any member of the Patients' Constituency; or

34.2.2 any other member of the trust, if he so requests.

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

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

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

34.4 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.

35. Documents available for public inspection

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

35.1.1 a copy of the current constitution;

35.1.2 a copy of the current authorisation;

35.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

35.1.4 a copy of the latest annual report;

35.2 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:

35.2.1 a copy of any order 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 65L (trusts to be dissolved) of the 2006 Act.

35.2.2 a copy of any report laid under section 65D (appointment of trust administrator) of the 2006 Act.

35.2.3 a copy of any information published under section 65D (appointment of trust administrator) of the 2006 Act.

35.2.4 a copy of any draft report published under section 65F (administrator’s draft report) of the 2006 Act.

35.2.5 a copy of any statement provided under section 65F (administrator’s draft report) of the 2006 Act.

35.2.6 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.

35.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

35.2.8 a copy of any final report published under section 65I (administrator’s final report).

35.2.9 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.

35.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

35.2 A person who requests a copy of or an extract from any of the above documents is to be provided with a copy.

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

36. Auditor

36.1 The trust shall have an auditor.

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

37. Audit Committee

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

38. Accounts

38.1 The trust must keep proper accounts and proper records in relation to the accounts.

- 38.2 Monitor may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.
- 38.2 The accounts are to be audited by the trust's auditor.
- 38.3 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 39.4 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

39. Annual report, forward plans and non-NHS work

- 39.1 The trust shall prepare an Annual Report and send it to Monitor.
- 39.2 The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 39.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 39.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 39.5 Each forward plan must include information about –
 - 39.5.1 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
 - 39.5.2 the income it expects to receive from doing so.
- 39.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must –
 - 39.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its function, and
 - 39.6.2 notify the directors of the trust of its determination.
- 39.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

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

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

- 40.1 the annual accounts
- 40.2 any report of the auditor on them
- 40.3 the annual report.

41. Instruments

- 41.1 The trust shall have a seal.
- 41.2 The seal shall not be affixed except under the authority of the Board of Directors.

42. Amendment of the Constitution

- 42.1 Amendments by the trust of its constitution are to be made with the approval of Monitor. For the avoidance of doubt, any amendments to the annexes attached to this constitution must also be approved by Monitor.
- 42.2 In addition to 42.1 above The Board of Directors will approve any proposed changes to the Constitution in conjunction with the Council of Governors before presentation to Monitor for approval.

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 7.1 and 7.3)

The Public Constituency is comprised of the following areas:

- Area A - Middlesbrough (defined by Local Authority boundaries)
- Area B - Redcar and Cleveland (defined by Local Authority boundaries)
- Area C - Hambleton and Richmondshire (defined by the boundaries of Hambleton District Council and Richmondshire District Council)
- Area D - Rest of England (defined as any area of England other than those in areas A, B and C)

There will be a minimum of 50 members in each of the the three areas A, B and C, and a minimum of 10 members for Area D in the Public Constituency.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.4 and 8.5)

The Staff Constituency will not be divided into classes.

There will be a minimum of 30 members in the Staff Constituency.

Individuals who exercise functions for the purpose for the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have a contract of employment for a period of at least 12 months, such staff groups will include:

- Endeavour SCH PLC
- Sovereign Hospital Services t/a Carillion Government Services
- Middlesbrough Council Hospital Social Work Team
- Cambridge Perfusion Services

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

(Paragraphs 8.4 and 8.6)

The Patients’ Constituency will not be divided into classes.

There will be a minimum of 50 members in the Patients’ Constituency

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 11.2 and 11.3 and Notes 13 to 18)

Elected Governors

The elected governors will be as follows

CONSTITUENCY	GOVERNORS
Public Constituency:	
A – Middlesbrough	5
B – Redcar and Cleveland	5
C- Hambleton and Richmondshire	5
D – Rest of England	1
E – Patients’ Constituency	2
F - Staff Constituency	3

Appointed governors

GOVERNORS REQUIRED BY STATUTE	GOVERNORS
Primary Care Trusts	
- Middlesbrough PCT	1
- Redcar and Cleveland PCT	1
- North Yorkshire and York PCT	1
Local Authorities	
- Middlesbrough	1
- Redcar and Cleveland	1
- North Yorkshire	1
Universities	
- University of Teesside	1
- University of Durham	1
- University of Newcastle	1
PARTNERSHIP GOVERNORS	
LINKS Representative - Middlesbrough	1
- Carers organisation – The Princess Royal Trust, Hambleton and Richmondshire	1
- Partnership organisation possessing influence over local economic development and regeneration issues – Tees Valley Regeneration	1
- Voluntary sector representative – MacMillan Cancer Support, North of England	1

Governors representing PCTs, Local Authorities and Universities will be appointed pursuant to a process agreed by those organisations and the Trust.

ANNEX 5 – THE MODEL ELECTION RULES

(Paragraph 12.2)

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

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

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

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

Part 6 - Counting the votes

- stv36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates
- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- fpp54. Countermand or abandonment of poll on death of candidate
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Expenses

- 55. Expenses incurred by candidates
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Part 1 - Interpretation

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

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

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

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

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

(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

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

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

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

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

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

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

Part 3 – Returning officer

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

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

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

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

- 8. Notice of election** – The returning officer is to publish a notice of the election stating
- (a) the constituency, or class within a constituency, for which the election is being held,
 - (b) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
 - (c) the details of any nomination committee that has been established by the corporation,
 - (d) the address and times at which nomination papers may be obtained;
 - (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
 - (f) the date and time by which any notice of withdrawal must be received by the returning officer
 - (g) the contact details of the returning officer, and
 - (h) the date and time of the close of the poll in the event of a contest.

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

(2) The returning officer-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;

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

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

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

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

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

(2) The statement must show –

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

as given in their nomination paper.

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

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

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

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

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

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board of governors, then –

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

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

- (2) The declaration of identity is to include a declaration –
 - (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public or patient constituency, of the particulars of that member’s qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter’s signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter’s ballot paper may be declared invalid.

Action to be taken before the poll

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

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

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

- (a) the name of the corporation,

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

24. Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

(2) The covering envelope is to have –

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

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

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

The poll

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

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Procedure for receipt of envelopes

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

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

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

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

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

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

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

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

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

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

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

34. Declaration of identity but no ballot paper (public and patient constituency) –

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

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

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

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

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

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

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

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

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

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

“stage of the count” means –

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

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

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

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

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

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

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

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

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

Stv39. Rejected ballot papers – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

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

fpp39. Rejected ballot papers – (1) Any ballot paper –

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

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

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

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

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

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

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

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

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

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

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

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

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

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

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

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

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

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

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

stv44. Exclusion of candidates – (1) If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

stv45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

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

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

stv46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.

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

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

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

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

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

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

(2) The returning officer is to make –

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

available on request.

stv47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

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

(2) The returning officer is to make –

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

available on request.

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

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

Part 8 – Disposal of documents

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by any person without the consent of the Regulator.

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

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

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

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

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

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

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

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

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

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

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

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

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

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

- (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(6) The returning officer is to endorse on each packet a description of –

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

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer’s satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

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

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

Part 10 – Election expenses and publicity

Election expenses

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

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

- (a) personal expenses,

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

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

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

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

Publicity

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

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

as it considers necessary.

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

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

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

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

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than [250] words, [and]

[(b) a photograph of the candidate.]

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

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

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

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

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

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

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

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

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

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

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

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

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

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

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

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

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

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

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

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 13.3 and Note 23)

1. ELIGIBILITY TO BECOME A MEMBER OF THE COUNCIL OF GOVERNORS

A person may not become a member of the Council of Governors, and if already holding such office will immediately cease to do so, if:

- 1.1 They are a Director of the Trust, or a Governor or Director of another NHS Foundation Trust or any other NHS body (unless they are appointed as a member of the Council of Governors by an appointing organisation).
- 1.2 They have previously been an Executive or Non Executive Director of the Trust.
- 1.3 They are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust.
- 1.4 They are under the age of 16.
- 1.5 They are a member of a Local Authority's Overview and Scrutiny Committee covering health matters.
- 1.6 They are a member of the executive/management committee of a LINKS organisation (unless they are appointed as a member of the Council of Governors by that organisation).
- 1.7 Being a member of the Public Constituency they refuse or fail to sign a declaration, in the form specified by the Council of Governors, giving particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors.
- 1.8 They are a vexatious complainant of the Trust, as defined by Trust policy.
- 1.9 They have been involved within the last 10 years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against registered volunteers.
- 1.10 They have been excluded from any of the Trust premises within the last 10 years.
- 1.11 Their name has been placed on a register of individuals who have committed an offence covered by Schedule 1 of the Children and Young Persons Act 1933 and / or they are required to register under the Sexual Offences Act 2003, or an individual who is subject to a Sex Offender Order or who has committed a sexual offence prior to the requirement to register under current legislation.

- 1.12 On the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable in accordance with the Trust's CRB Disclosure Policy.
- 1.13 They have within the preceding two years been lawfully dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
- 1.14 They are a person whose tenure of office as the Chairman or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- 1.15 They have been removed from membership of a professional body or from a list of registered medical, dental, nursing or other health care practitioners as a result of disciplinary action or any conclusion that the continued inclusion of that person's name on any such list or membership of any such professional body would be prejudicial to the efficiency of the services to which the professional body or list relates and have not subsequently been re-instated to membership or such a list.

2. TERMINATION OF OFFICE AND REMOVAL OF MEMBERS OF THE COUNCIL OF GOVERNORS

A person holding office as a member of the Council of Governors shall immediately cease to do so if:

- 2.1 They resign by notice in writing to the Trust Secretary.
- 2.2 The governor is appointed as a Non Executive Director of South Tees Hospitals NHS Foundation Trust.
- 2.3 Their circumstances change so that they are ineligible under the general terms of eligibility of Governors as set out in the main body of this constitution in section 11.3, and 14.
- 2.4 It otherwise comes to the notice of the Trust Secretary at the time the member of the Council of Governors takes office or later that the member of the Council of Governors is disqualified in accordance with paragraph 14 of the Constitution.
- 2.5 They fail to attend three meetings in any financial year, unless the members of the Council of Governors are satisfied that:
 - a) the absences were due to reasonable causes; and they will be able to start attending meetings of the Council of Governors again within such a period as the Council of Governors consider reasonable

- 2.6 In the case of an elected member of the Council of Governors, they cease to be a member of the Trust. Where a Governor moves from one area of the Public Constituency to another, the Governor would continue to be eligible to be a member of the Trust but would need to cease holding office because they would no longer be eligible to represent the area that had elected them.
- 2.7 In the case of an appointed member of the Council of Governors, the appointing organisation terminates the appointment.
- 2.8 They have failed to undertake any training which the Council of Governors requires all members of the Council of Governors to undertake, unless the members of the Council of Governors are satisfied that:
- a) The failure to undertake training was due to reasonable causes; and
 - b) They will be able to undertake the required training within such a period as the Council of Governors consider reasonable.
- 2.9 They have failed to sign and deliver to the Trust Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's and/or the Council of Governors Code of Conduct.
- 2.10 He is removed from the Council of Governors by a resolution approved by a majority of the remaining members of the Council of Governors present and voting at a General Meeting on the grounds that:
- a) They have committed a serious breach of the Trust's and/or Council of Governors Code of Conduct, which may include chairman's action for removal of a governor if serious breaches of the Code have occurred, as set out in section 5 and 6 of the Code of Conduct for Governors; or
 - b) They have acted in a manner detrimental to the interests of the Trust, or
 - c) They have failed to discharge their responsibilities as a member of the Council of Governors.
- 2.11 He fails to disclose any interest required to be disclosed in meetings and decisions of the Council of Governors, and a majority of the Council of Governors approves his removal from office.

3. REQUIREMENT OF MEMBER OF THE COUNCIL OF GOVERNORS TO NOTIFY TRUST

Where a person has been elected or appointed to be a member of the Council of Governors and they become disqualified from holding office under paragraph 14 or paragraph 2 of Annex 6 of this constitution, they shall notify the Trust Secretary in holding writing of such disqualifications.

4. INITIAL TENURE OF OFFICE FOR THE COUNCIL OF GOVERNORS

In the first elections of governors to the Council of Governors the tenure period will be as follows:

CONSTITUENCY	2 year Tenure	3 Year Tenure
A – Middlesbrough	2 seats	3 seats
B – Redcar and Cleveland	2 seats	3 seats
C- Hambleton and Richmondshire	2 seats	3 seats
D – Patients’ Constituency	1 seat	2 seats
E - Staff Constituency	1 seat	2 seats

The determination of those seats that will be elected for three years will be determined by the number of votes polled, with three year tenure going to those individuals receiving the most votes until all the three year tenure seats are filled for that constituency or that area of the constituency. The remaining governors will be elected initially for two years.

In subsequent elections all governors will have three year tenures.

5. VACANCIES ON THE COUNCIL OF GOVERNORS

Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:

- 5.1 Where the vacancy arises amongst the appointed members of the Council of Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 5.2 Where the vacancy arises amongst the elected members within 12 months following an election to that seat, the Trust shall approach the person who polled the next highest number of votes in the original election and offer the vacant seat to them for the remainder of that term of office, with the proviso that the candidate will need to be a member of the same constituency and class as that in relation to where the vacancy has arisen. Should that person decline, the Trust shall make a similar approach to the next highest polling candidate. The Trust shall continue to make such approaches to the candidates for such seat in descending order of their polled number of votes until the seat is filled. Where there is no next in line candidate or none of the other candidates for the seat want to, or are able to, fill the vacancy an election will be called by the Council of Governors.
- 5.3 Where the vacancy arises amongst the elected members more than 12 months after the initial election, the Trust shall call an election within three months to fill the seat for the remainder of that term of office for the respective constituency and class.

6. EXPENSES

- 6.1 The trust may pay travel and other expenses to members of the Council of Governors at rates determined by the trust.
- 6.2 Expenses incurred shall be reimbursed in line with the appropriate Trust policies.
- 6.3 Appointed Governors will not be entitled to recover their expenses where their employer would normally provide reimbursement.

7. STAFF CONSTITUENCY

- 7.1 The trust will grant reasonable time off, with pay, to recognised staff governors to carry out governor duties.
- 7.2 Where time off is requested, this will be done in accordance with the trust's human resources policies and procedures.

8. ROLES AND RESPONSIBILITIES

The roles and responsibilities of members of the Council of Governors are:

- a) **Advisory** – Communicating to the Board wishes of members and the wider community.
- b) **Guardianship** – Ensuring that the Trust is operating in accordance with its Terms of Authorisation. In this regard it acts as a Trustee for the welfare of the organisation.
- c) **Strategic** – Advising on the longer term direction to help the Board effectively determine its policies.

In particular the members of the Council of Governors are to:

- 8.1 Develop the membership of the Trust and represent interests of members.
- 8.2 Give the views of the Council of Governors to the Board of Directors for the purposes of the preparation (by the Directors) of the document containing information on the Trust's forward planning in respect of each financial year to be given to the Independent Regulator of NHS Foundation Trusts.
- 8.3 Respond to any matter as appropriate when consulted by the Directors.
- 8.4 Appoint and remove the Chairman and the other Non-executive Directors in accordance with paragraph 22 of this Constitution.

- 8.5 Decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and other Non-executive Directors in accordance with paragraph 30 of this Constitution.
- 8.6 Approve the appointment of the Chief Executive in accordance with paragraph 25 of this Constitution.
- 8.7 Consider the annual accounts, any reports of the auditor on them, and the annual report.
- 8.8 Appoint and remove the Trust's external auditor.

9. APPOINTMENT OF NON-EXECUTIVE DIRECTORS (including Chairman and Deputy Chairman)

- 9.1 In accordance with the NHS Foundation Trust Code of Governance the Council of Governors shall establish a Committee of the Council of Governors and the Board. The committee will evaluate the balance of skills, knowledge and experience of the Board and, in light of this evaluation, prepare a description of the roles and capabilities required for a particular appointment of both Executive and Non Executive Directors (including the Chairman). The Committee shall comprise three members of the Council of Governors and two Directors (at least one of whom will be a Non-executive Director). The Committee may have an independent assessor in attendance if appropriate.
- 9.2 The Council of Governors will take into account the views of the Board of Directors on the balance of individual skills and experience it requires at the time a vacancy arises.
- 9.3 Suitable candidates will be identified by the Board of Directors which may, if it considers it appropriate in particular circumstances, engage an external organisation, recognised as expert in this field, to assist it in the whole process (including the work involved in 9.1 above).

10. REMUNERATION OF THE CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

In order to determine the proper level of remuneration and allowances that should be paid to the Chairman and other Non-executive Directors the Council of Governors may, from time to time, and at least every three years, consult, at the Trust's expense, with external professional advisers.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

(Paragraph 15)

FOREWORD

South Tees Hospitals NHS Foundation Trust (the “Trust”) is a public benefit corporation that was established in accordance with the provisions of National Health Service Act 2006.

These Standing Orders (SOs) are for the regulation of the Trust’s Council of Governors proceedings and business.

The Council of Governors will conduct its business in an open a way as possible and will:

1. Observe the Nolan principles of Public Life of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- 2 At all times seek to comply with the NHS Foundation Trust Code of Governance; and
- 3 At all times seek to comply with the Combined Code on Corporate Governance 2003.

Everything done by the Council of Governors should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

The Council of Governors will in its business be as transparent as it can be about its activities to promote confidence between the Council of Governors, the membership, the Board of Directors, staff, services users and the public.

COUNCIL OF GOVERNORS – STANDING ORDERS

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1. INTERPRETATION

- 1.1 Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Trust Secretary, Chief Executive and Director of Finance).
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:
- a) **ACCOUNTABLE OFFICER** shall be the officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
 - b) **BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chairman, and Non-executive Directors, appointed by the Council of Governors and the Executive Directors, appointed by the Non-executive Directors and (except for his own appointment) by the Chief Executive.
 - c) **BUDGET** shall mean 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.
 - d) **CHAIRMAN** is the person appointed by the Council of Governors as a Non Executive Chairman to lead the Board of Directors and Council of Governors to ensure it successfully discharges its overall responsibility for the Trust as a whole.
 - e) **CHIEF EXECUTIVE** shall mean the accountable officer of the Trust.
 - f) **COMMITTEE OF THE COUNCIL** means a committee formed by the Council of Governors with specific Terms of Reference, chair and membership.
 - g) **COMMITTEE OF THE BOARD** means a committee formed by the Board with specific Terms of Reference, Chair and Membership.
 - h) **COUNCIL** means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by the Chairman.
 - i) **COUNCIL MEMBER** means a person elected or appointed to the Council of Governors.
 - j) **DIRECTOR** means a person appointed to the Board of Directors

- k) **DEPUTY CHAIRMAN** means the Non-Executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason.
- l) **DIRECTOR OF FINANCE** shall mean the Chief Finance Officer of the Trust who will ensure compliance with Standing Financial Instructions.
- m) **FUNDS HELD ON TRUST** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.
- n) **MEMBER** means a person registered as a member of one of the constituencies of the Trust as outlined in this Constitution.
- o) **MONITOR** is the Independent Regulator of NHS Foundation Trusts appointed under the National Health Service Act 2006.
- p) **MOTION** means a formal proposition to be discussed and voted on during the course of a meeting.
- q) **NOMINATED OFFICER** means an officer charged with the responsibility for discharging specific tasks within Standing Orders in line with the 2006 Act.
- r) **NON-EXECUTIVE DIRECTOR** is a person appointed by the Council of Governors to be a member of the Board of Directors. Initially Non executives of the applicant NHS Trust will become Non-executives of the Foundation Trust, unless they choose not to do so. This includes the chairman of the Trust.
- s) **OFFICER** means an employee of the Trust
- t) **SOs** means Standing Orders
- u) **SFIs** means Standing Financial Instructions
- v) **TRUST** means South Tees Hospitals NHS Foundation Trust.
- w) **TRUST SECRETARY** this role will act as independent advice to the Board and monitor the Trust's compliance with its terms of authorisation and constitution.

2. GENERAL INFORMATION

- 2.1 The purpose of the Council of Governors' Standing Orders is to ensure that the highest standards of Corporate Governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance which is founded on "The Combined Code".

- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 A member of the Council of Governors who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a member of the Council of Governors save where the member of the Council of Governors has acted recklessly. On behalf of the Council of Governors and as part of the Trust's overall insurance arrangements the Board shall put in place appropriate insurance provision to cover such indemnity at the discretion of the trust.

3. COMPOSITION OF THE COUNCIL OF GOVERNORS

- 3.1 The composition of the Council of Governors shall be in accordance with the Trust's Constitution.
- 3.2 **Appointment of the Chairman and Deputy Chairman of the Council of Governors** - The Chairman or in the absence or incapacity of the Chairman the Deputy Chairman of the Trust will preside over meetings of the Council of Governors.
- 3.3 **Duties of the Deputy Chairman** – Where the Chairman has died or has otherwise ceased to hold office or where he has been unable to perform his duties as a Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his duties, be taken to include to the Deputy Chairman.
- 3.4 **Removal of the Chairman or Deputy Chairman of the Council of Governors** – it shall be for the Council of Governors to determine the period of office for the Chairman and Deputy Chairman, excluding the initial Chairman and Deputy Chairman, of the Council of Governors, which shall normally be for a period of up to three years after which the Council of Governors shall review the appointment. Should there be the requirement to remove the Chairman or Deputy Chairman of the Council of Governors this shall be carried out in accordance with SO 4.6.6.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

- 4.1 **Meetings held in Public**
 - 4.1.1 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting (whether for the whole or part of such meeting) for special reasons as determined by the Chairman in conjunction with the Council of Governors which may include, but are not limited to, the following reasons

- i. Publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - ii. There are special reasons stated in the resolution and arising from the nature of the business of the proceedings;
- 4.1.3 The Chairman may exclude any member of public from the meeting of the Council if they are interfering with or preventing the reasonable conduct of the meeting.
- 4.1.4 Meetings of the Council of Governors shall be held at least four times each year, inclusive of an Annual General Meeting, at times and places that the Council of Governors may determine.
- 4.1.5 The Council may invite the Chief Executive of the Trust, and other appropriate Directors, to attend any meeting of the Council of Governors and enable members of the Council of Governors to raise questions about the Trust affairs.

4.2 Calling Meetings

Notwithstanding, 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of the members of the Council of Governors, or if without so refusing the Chairman does not call a meeting within fourteen days after a requisition to do so, then the members of the Council of Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of the members of the Council of Governors.

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an officer of the Trust authorised by the Chairman to sign on their behalf, shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such member of the Council of Governors, at least 5 clear working days before the meeting.
- 4.3.2 The Trust secretary should ensure that a notice of a meeting of the Council of Governors is publicised to the public.

4.4 Setting the Agenda

The agenda for the meeting of the council of governors will be circulated with the notice of the meeting and any supporting papers.

- 4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors

and shall be addressed prior to any other business being conducted.

- 4.4.2 The Council of Governors will agree an annual programme of work proposed by the Board of Directors to ensure they discharge their responsibilities as governors.
- 4.4.3 A member of the Council of Governors desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear working days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 Chairman of the Meeting

At any meeting of the Council of Governors, the Chairman, if present, shall preside, initially this shall be the Chairman of the Trust in accordance with SO 3.2. If the Chairman is absent from the meeting the Deputy Chairman shall preside, initially this shall be the Deputy Chairman of the Trust in accordance with SO 3.2.

4.6 Notices and Motions

- 4.6.1 A member of the Council of Governors desiring to move or amend a motion shall send a written notice thereof at least 10 clear working days before the meeting to the Chairman, who shall insert in the agenda for the meeting, all notices so received subject to the notice given 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 subject to section 4.3 of these Standing Orders.
- 4.6.2 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.
- 4.6.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the members of the Council of Governors who give it and also the signature of four other members of the Council of Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any member of the Council of Governors, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate.
- 4.6.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a member of the Council of Governors to move:

- a) An amendment to the motion.
- b) The adjournment of the discussion or the meeting.
- c) That the meeting proceeds to the next business.
- d) That the motion shall be now put.

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

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.

In the case of motions under c) and d), to ensure objectivity motions may only be put by a member of the Council of Governors who has not previously taken part in the debate.

4.6.6 A motion to remove the Chairman or a Non-executive Director must be seconded by 10 members of the Council of Governors.

4.7 Chairman's Ruling

4.7.1 Statements of members of Governors made at the 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.

4.8 Voting

4.8.1 Decisions at meetings shall be determined by a majority of the votes of the members of the Council of Governors present and voting, with the exception of the appointment and removal of the Chair or a Non Executive Director, which should require approval by three quarters of the Council of Governors.

4.8.2 In the case of any equality in votes, the Trust Chairman shall have a second or casting vote (out with the provisions of 22.2 of the constitution).

4.8.2 All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members of the Council of Governors present so request.

4.8.3 If at least one-third of the members of the Council of Governors present so request, the voting (other than by paper ballot) on any

question may be recorded to show how each member of the Council of Governors voted or abstained.

- 4.8.4 If a member of the Council of Governors so requests, his/her vote shall be recorded by name upon any vote (other than a paper ballot).
- 4.8.5 In no circumstances may an absent member of the Council of Governors vote by proxy. Absence is defined as being absent at the time of the vote.

4.9 Suspension of Standing Orders (SOs)

Except where this would contravene any provision of the constitution or any direction made by the Independent Regulator of NHS Foundation Trusts, 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 the Chair or Deputy Chair, and that a majority of those present vote in favour of suspension.

- 4.9.1 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.9.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.9.3 No formal business may be transacted while Standing Orders are suspended.
- 4.9.4 The Audit Committee shall review every decision to suspend Standing Orders.

4.10 Record of Attendance

- 4.10.1 The names of the members of the Council of Governors present at the meeting shall be recorded in the minutes.

4.11 Minutes

- 4.11.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person chairing it.
- 4.11.2 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.

4.11.3 Minutes shall be circulated in accordance with the members of the Council of Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.1 of these Standing Orders.

4.12 Quorum

4.12.1 No business shall be transacted at a meeting of the Council of Governors unless; at least 10 elected and 6 appointed members of the Council of Governors are present.

4.12.2 If a member of the Council of Governors has been disqualified from participating in the discussion of any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1 **Emergency Powers** – The powers which the Council of Governors has retained to itself within these Standing Orders may in emergency be exercised by the Chairman after having consulted at least five elected members of the Council of Governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council for ratification.

5.2 **Delegation to Committees** – The Council of Governors will establish a Nominations Committee to fulfill the duty of advising the Council of Governors on the appointment of Non Executive Directors and Chairman.

6. SUBCOMMITTEES – FURTHER PROVISIONS

6.1 The Council of Governors will review and agree with the Chairman an annual programme of work which will include and refer to the establishment of any sub committees of the Council of Governors to assist where appropriate in fulfilling its work programme. This will be reviewed on an annual basis in accordance with best practice.

6.3 These Standing Orders, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees or sub-committees established by the Council.

7. CONFIDENTIALITY

- 7.1 A member of the Council of Governors or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before, the committee without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.
- 7.2 A member of the Council of Governors or a non-member of the Council of Governors in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

8. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

8.1 Declaration of Interests

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.

8.1.1 Interests regarded in 8.1 above may include but are not exclusive to:

- 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) Employment with any private company, business or consultancy.
- d) Share holdings in organisations likely or possibly seeking to do business with the NHS.
- e) A position of authority in a charity or voluntary organisation in the field of health and social care.
- f) Any connection with a voluntary or other organisation contracting for NHS Services.

8.1.2 If a member of the Council of Governors has any doubt about the relevance of an interest, they should discuss it with the Chairman or Trust secretary who shall advise them whether or not to disclose the interest.

- 8.1.3 At the time members of the Council of Governors' interests are declared, they should be recorded in the Council of Governors' minutes and entered in a Register of Interests of members of the Council of Governors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 8.1.4 Members of the Council of Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.
- 8.1.5 During the course of a Council meeting, if a conflict of interest is established, the member of the Council of Governors concerned shall, unless two-thirds of those Members of the Council of Governors present agree otherwise withdraw from the meeting and play no part in the relevant discussion or decision.
- 8.1.6 The interests of the members of the Council of Governors' spouses or partners shall be declared in accordance with section 17 of the trusts constitution.

8.2 Register of Interests

- 8.2.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of members of the Council of Governors.
- 8.2.2 Details of the Register will be kept up to date and reviewed annually.
- 8.2.3 The Register will be available for inspection by members of the public.

9. COMPLIANCE – OTHER MATTERS

- 9.1 Members of the Council of Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.2 Members of the Council of Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life, and both the Trust's and Council of Governors Code of Conduct as amended from time to time:

- **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends

- **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties

- **Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit

- **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office

- **Openness**

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands

- **Honesty**

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest

- **Leadership**

Holders of public office should promote and support these principles by leadership and example

10. RESOLUTION OF DISPUTES WITH BOARD OF DIRECTORS

10.1 The Council of Governors has three main roles:

- **Advisory** Communicating to the Board the wishes of members and the wider community.

- **Guardianship** Ensuring that the Trust is operating in accordance with its Terms of Authorisation. In this regard it acts as a Trustee for the welfare of the organisation.
- **Strategic** Advising on the longer term direction to help the Board effectively determine its policies.

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

- Note advice from, and consider the views of the Council of Governors;
- Set the strategic direction and leadership of the Trust;
- Ensure the Terms of Authorisation are complied with;
- Set organisational and operational targets;
- Assess, manage and minimise risk;
- Assess achievement against the above objectives;
- Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives;
- Ensure that the highest standards of Corporate Governance are applied throughout the organisation.

10.3 Should a dispute arise between the Council and the Board of Directors then the disputes resolution procedure set out below recognises the different roles of the Council and the Board as described above.

10.3.1 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, shall first endeavour through discussion with members of the Council of Governors and Directors or appropriate representatives of them, to achieve the earliest possible conclusion and to resolve the matter to the reasonable satisfaction of both parties.

10.3.2 Failing resolution under 10.3.1 above then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.3.3 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

- 10.3.4 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, shall immediately, or as soon as is practicable communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.3.1 above shall be repeated.
- 10.3.5 If, in the opinion of the Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, and following the further discussions prescribed in 10.3.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council and the Board accordingly.
- 10.3.6 On the satisfactory completion of this disputes process the Board of Directors shall implement the agreed changes.
- 10.3.7 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.4 Nothing in this procedure shall prevent the Council, if it so desires, from informing the Independent Regulator of NHS Foundation Trusts that, in the Council's opinion, the Board has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the terms of its authorisation.

11. CHANGES TO STANDING ORDERS

11.1 These Standing Orders shall be amended only if:

- 11.1.1 A notice of motion under Standing Order 4.6 has been given; and
- 11.1.2 No fewer than half the total of the members of the Council of Governors vote in favour of amendment; and
- 11.1.3 At least two thirds of the voting members are present; and
- 11.1.4 The variation proposed does not contravene a statutory provision or a direction made by the Regulator of NHS Foundation Trusts and
- 11.1.5 The amendment is agreed by the Board of Directors; and
- 11.1.6 The amendments agreed by the Board of Directors are approved by the Independent Regulator of NHS Foundation Trusts.

ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

(Paragraph 27 and Note 26)

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1. INTRODUCTION

The principal place of business of the Trust is The James Cook University Hospital, Marton Road, Middlesbrough.

NHS Foundation Trusts are governed by a Regulatory Framework that confers the functions of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 ('the 2006 Act'); their constitutions; and the terms of their authorisation granted by the Independent Regulator of NHS Foundation Trusts ('the Independent Regulator').

The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the practice and procedure of the Board of Directors. The Board of Directors will conduct its business in as open a way as possible and will:

- a) Observe the Nolan principles of Public Life of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- b) At all times seek to comply with the NHS Foundation Trust Code of Governance; and
- c) At all times seek to comply with the Combined Code on Corporate Governance 2003. Everything done by the Trust should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

These Standing Orders (SOs) are for the regulation of the Board of Directors' proceedings and business.

2. INTERPRETATION

- 2.1 Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders on which he/she should be advised by the Trust Secretary, Chief Executive and Director of Finance.
- 2.2 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:
 - a) **ACCOUNTABLE OFFICER** shall be the officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
 - b) **BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chairman, and Non-executive Directors, appointed by the Council of Governors and the Executive Directors, appointed by the Non-executive Directors and (except for his own appointment) by the Chief Executive.

- c) **BUDGET** shall mean 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.
- d) **CHAIRMAN** is the person appointed by the Council of Governors as a Non Executive Chairman to lead the Board of Directors and Council of Governors to ensure it successfully discharges its overall responsibility for the Trust as a whole.
- e) **CHIEF EXECUTIVE** shall mean the accountable officer of the Trust.
- f) **COMMITTEE OF THE COUNCIL** means a committee formed by the Council of Governors with specific Terms of Reference, chair and membership.
- g) **COMMITTEE OF THE BOARD** means a committee formed by the Board with specific Terms of Reference, Chair and Membership.
- h) **COUNCIL** means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by the Chairman.
- i) **COUNCIL MEMBER** means a person elected or appointed to the Council of Governors.
- j) **DIRECTOR** means a person appointed to the Board of Directors
- k) **DEPUTY CHAIRMAN** means the Non-Executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason.
- l) **DIRECTOR OF FINANCE** shall mean the Chief Finance Officer of the Trust who will ensure compliance with Standing Financial Instructions.
- m) **FUNDS HELD ON TRUST** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.
- n) **MEMBER** means a person registered as a member of one of the constituencies of the Trust as outlined in this Constitution.
- o) **MONITOR** is the Independent Regulator of NHS Foundation Trusts appointed under the National Health Service Act 2006.
- p) **MOTION** means a formal proposition to be discussed and voted on during the course of a meeting.

- q) **NOMINATED OFFICER** means an officer charged with the responsibility for discharging specific tasks within Standing Orders in line with the 2006 Act.
- r) **NON-EXECUTIVE DIRECTOR** is a person appointed by the Council of Governors to be a member of the Board of Directors. Initially Non executives of the applicant NHS Trust will become Non-executives of the Foundation Trust, unless they choose not to do so. This includes the chairman of the Trust.
- s) **OFFICER** means an employee of the Trust
- t) **SOs** means Standing Orders
- u) **SFIs** means Standing Financial Instructions
- v) **TRUST** means South Tees Hospitals NHS Foundation Trust.
- w) **TRUST SECRETARY** this role will act as independent advice to the Board and monitor the Trust's compliance with its terms of authorisation and constitution.

3. THE BOARD OF DIRECTORS – ITS COMPOSITION, APPOINTMENTS AND INDEMNITY ARRANGEMENTS

- 3.1 All business shall be conducted in the name of the Trust.
- 3.2 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 3.3 All the powers of the Trust shall be exercised by the Board of Directors on its behalf.
- 3.4 The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board. These powers and decisions are set out in "Reservation of Powers to the Board" and have effect as if incorporated into the Standing Orders. The Board of Directors must adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

3.5 Composition of the Board of Directors

The composition of the Board of Directors will be:

- The Chairman of the Trust (Non Executive Director as required by Schedule 7 of the NHS Act 2006)
- Within the range of 5-8 other Non Executive Directors

- Within the range of 5-8 Executive Directors including:
- One of the executive directors shall be the Chief Executive.
- The Chief Executive shall be the Accounting Officer.
- One of the executive directors shall be the Finance Director.
- One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- One of the executive directors is to be a registered nurse or registered midwife.
- The Trust Secretary to the Board of Directors will be in attendance at all Board meetings.

3.5.1 The number of Directors may be increased, (within the range of 5 – 8 as outlined above) with the approval of the Board, provided always at least half the Board, excluding the Chairman, comprises Non-executive Directors determined by the Board to be independent.

3.6 Terms of Office of the Chairman and Members of the Board

3.6.1 Guidance relating to the period of tenure of office of the Chairman and Non-executive Directors and the termination or suspension of office of the Chairman and Directors is contained in the Foundation Trust Code of Governance.

3.6.2 Non Executive Directors including the Chairman will be appointed by the Council of Governors for a period of 3 years and subject to re-appointment thereafter at intervals of 3 years. Any term beyond six years for a Non Executive Director will be subject to rigorous review by the Council of Governors. Non Executive Directors may serve more than nine years subject to an annual re-appointment.

3.7 Appointment of the Chairman and Non-executive Directors

The Chairman and Non-executive Directors are to be appointed/removed by the Council of Governors in accordance with the constitution.

3.8 Appointment of Deputy Chairman

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

3.9 Any Non-executive Director so elected may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman. The Council of Governors may thereupon appoint another Non-executive Director as Deputy Chairman in accordance with paragraph 3.8.

3.10 Powers of Deputy Chairman

Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chairman owing to illness, absence or any other cause, references to the Chairman in the Standing Orders shall, so long as there is no Chairman able to perform his/her duties, be taken to include the Deputy Chairman.

3.11 **Senior Independent Director** – The Chairman shall, following consultation with the Council of Governors appoint one of the Non-executive Directors as a “Senior Independent Director”.

3.12 In accordance with paragraph 25 of this Constitution the Non-executive Directors shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors) and a committee consisting of the Chairman, Chief Executive and the other non executive directors shall appoint or remove the other Executive Directors.

3.13 The Board shall nominate a Trust Secretary, who, under the direction of the Chairman and Chief Executive, shall ensure good information flows within the Board and Council of Governors and their Committees, between Directors and members of the Council of Governors, and between senior management and the Board. The Trust Secretary shall also advise the Board and Council of Governors on all governance matters and shall facilitate induction and professional development as required. The appointment and removal of the Trust Secretary will be carried out jointly with the Chief Executive and Chairman.

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

3.15 Non-executive Directors may, at the Trust’s expense, seek external advice or appoint an external adviser on any material matter of concern provided the decision to do so is a collective one by the majority of Non-executive Directors. Approval of any such expenses will be done in conjunction with the allocated budget and financial procedure.

3.16 Disqualification and removal of Directors:

Over and above the legal minimum, a person may not become or continue as a Director if they:

- Are a Governor of the Trust;
- Are the subject of a disqualification order made under the Company Directors Disqualification Act 1986
- Have had their name removed by a direction under S.46 of the 1977 Act from any list prepared under Part II of that Act, and have not subsequently had their name included in such a list;
- Are no longer a member of one of the public constituencies (Non Executive Directors only)
- Have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
- Have had a tenure of office as a Chairman or as a member or director of a health service body terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings or for non-disclosure of a pecuniary interest;
- Have refused without reasonable cause to fulfill any training requirement established by the Board of Directors;
- Have refused to sign and deliver a statement in the prescribed format confirming acceptance of a Code of Conduct for Directors.

4. MEETINGS OF THE BOARD OF DIRECTORS

4.1 Admission of the Public and the Press

Meetings of the Board of Directors shall be open to members of the public or representatives of the press. Members of the public may be excluded from a meeting (whether for the whole or part of such meeting) for special reasons as determined by the Chairman in conjunction with the Board of Directors, which may include, but are not limited to, the following reasons:

- Publicity would be prejudicial to the public interest by reasons of the confidential nature of the business to be transacted; or
- There are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

The Chairman may exclude any member of the public from the meeting of the Board of Directors if they are interfering with, or preventing the reasonable conduct of the meeting.

4.2 Confidentiality

Directors and Officers and 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 Board of Directors meeting, without the express permission of the Board of Directors. This

prohibition shall apply equally to the content of any discussion during the Board of Directors' meeting which may take place on such reports or papers.

- 4.3 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 4.4 The Chairman of the Trust may call a meeting of the Board of Directors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him/her at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 4.5 **Notice of Meetings** - Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least five clear days before the meeting.
- 4.6 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 4.7 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 4.8 Agendas will wherever possible be sent to Directors at least five clear days before the meeting and supporting papers, whenever possible.
- 4.9 The Trust Secretary will ensure that a notice of a meeting of the Board of Directors is publicised to the public and papers made available on the Trust's website.
- 4.10 **Setting the Agenda**
- The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.11 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. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.

4.12 **Chairman of Meeting** - At any meeting of the Board of Directors, the Chairman of the Board of Directors, if present, shall preside. If the Chairman is absent from the meeting the Deputy-Chairman, if there is one and he/she is present, shall preside. If the Chairman and Deputy-Chairman are absent such Director (who is not also an officer of the Trust) as the Directors present shall choose shall preside.

4.13 If the Chairman is absent temporarily on the grounds of a declared conflict of interest the Deputy-Chairman, if present, shall preside. If the Chairman and Deputy-Chairman are absent, or are disqualified from participating, such non-executive director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chairman, the Chairman shall not preside over the meeting during which the matter is under discussion.

If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Non Executive Director, the Non Executive Directors shall not preside over the meeting during which the matter is under discussion.

4.14 The Directors (excluding the Chairman and the other non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chairman including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.

4.15 **Annual Public Meeting**

The Trust will publicise and hold an annual public meeting that is open to members of the public and representatives of the press.

4.16 **Notices of Motion** - A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to Standing Order 4.6.

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

4.18 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the

Chairman to propose a motion to the same effect within 6 months; however the Chairman may do so if he/she considers it appropriate.

- 4.19 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.20 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
 - 4.21 An amendment to the motion.
 - 4.22 The adjournment of the discussion or the meeting.
 - 4.23 That the meeting proceed to the next business. (*)
 - 4.24 The appointment of an ad hoc committee to deal with a specific item of business.
 - 4.25 That the motion be now put. (*)
 - 4.26 A motion resolving to exclude the public (including the press).

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

- 4.21 **Chairman's Ruling** - Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final. In this interpretation he/she shall be advised by the Trust Secretary on standing orders and the case of Standing Financial instructions by the Director of Finance.
- 4.22 **Voting** - Every question put to a vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.
- 4.23 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.24 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.25 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.26 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

- 4.27 An officer who has been appointed formally by the Board of Directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board of Directors 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.
- 4.28 **Minutes** - 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 presiding at it.
- 4.29 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.
- 4.30 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 4.31 **Joint Directors** - Where the office of a Director is shared jointly by more than one person:
- a) either or both or any of those persons may attend or take part in meetings of the Board of Directors;
 - b) if both/any are present at a meeting they should cast one vote if they agree;
 - c) in the case of disagreements no vote should be cast;
 - d) the presence of either/any or both/any of those persons should count as the presence of one person for the purposes of Standing Order 4.40 (Quorum).
- 4.32 **Suspension of Standing Orders** - Except where this would contravene any provision of the constitution or any direction made by the Independent Regulator of NHS Foundation Trusts, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 4.33 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.34 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.35 No formal business may be transacted while Standing Orders are suspended.

- 4.36 The Audit Committee shall review every decision to suspend Standing Orders.
- 4.37 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- 4.37.1 a notice of motion under Standing Order 4.17 has been given; and
 - 4.37.2 no fewer than half the total of the Trust's non executive directors vote in favour of amendment; and
 - 4.37.3 at least two-thirds of the Directors are present; and
 - 4.37.4 the variation proposed does not contravene a statutory provision or a direction made by the Regulator of NHS Foundation Trusts and
 - 4.37.5 the amendment is approved by the Independent Regulator of NHS Foundation Trusts.
- 4.38 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
- 4.39 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors appointed, (including at least one non-executive director and one executive director) are present.
- 4.40 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

The above requirement for at least one executive director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee). The above requirement for at least one non-executive Director to form part of the quorum shall not apply where the Non-Executive Directors are excluded from a meeting.

- 4.41 **Adjournment of Meetings** - The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.

- 4.42 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.
- 4.43 **Observers at Board of Directors meetings** - The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below or by a Director of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2 **Emergency Powers** – The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised jointly by the Chief Executive and the Chairman after having consulted at least two other Non-executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.
- 5.3 **Delegation to Committees** – The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees of Executive Directors, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board and in accordance with Schedule 7 of the Act.

The Board shall agree and regularly review the setting up of committees to assist and advise the Board in fully discharging its duties as a healthcare organisation.

- 5.4 **Delegation to Officers** – Those functions of the Trust which have not been retained as reserved to the Board or delegated to an executive committee may be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate Executive Directors only to undertake the remaining functions for which they will still retain accountability to the Board.
- 5.5 The Chief Executive shall prepare a Scheme of Decisions Reserved to the Board and Schedule of Decision/Duties Delegated by the Board, identifying their proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of

Delegation which shall be considered and approved by the Board as indicated above.

- 5.6 Nothing in the Schedule of Decision/Duties Delegated by the Board shall impair the discharge of the direct accountability to the Board of the Director of Finance or other Director to provide information and advise the Board in accordance with any statutory requirements.
- 5.7 If for any reason these Standing Orders are not complied with, full details of the non compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and officers have a duty to disclose any non compliance with these Standing Orders to the Chief Executive as soon as possible.

6. COMMITTEES

- 6.1 **Formation of Committees** – The Board may form committees of the Trust, consisting wholly or partly of members of the Board of Directors or wholly of persons who are not members of the Board of Directors.
- 6.2 Where the Board delegates a function or power to a committee this committee shall be formed of Directors solely and may not establish sub committees, in accordance with Schedule 7 of the Act.
- 6.3 Where the Board agrees to the setting up of committees consisting of other persons, this committee may not be delegated a function or any power of the Board of Directors but will advise the Board to assist in the Board effectively discharging its duties. Sub Committees of any such committees may be agreed.
- 6.4 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee formed by the Trust.
- 6.5 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither Non executive Directors nor Directors, shall be appointed to a committee, the terms of such appointment shall be defined by the Board and the terms of reference of that committee. Those appointed would not constitute formal members of the committee and preside in an attendance capacity only.

- 6.7 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations and directions laid down by the Board of Directors.
- 6.9 All committees and sub committees of the Board of Directors will be subject to an annual review to ensure best practice and fitness for purpose in conducting and governing the trusts business.

6.10 **Confidentiality**

A member of the Board of Directors or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential or embargoed.

7 **DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

- 7.1 **Declaration of Interests** If a director has a pecuniary, personal or family interest, whether the 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 Board of Directors, the director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it.
- 7.2 Interests which may be declared may include but are not exclusive to:
- 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) Share holdings in organisations likely or possibly seeking to do business with the NHS.
 - d) A position of trust 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) Any other commercial interest in the decision the committee or Board meeting may be considering
- 7.3 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman.
- 7.4 At the time Board members' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.

- 7.5 Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.6 During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion (unless the Board decides otherwise) or decision.
- 7.7 The interests of Board members' spouses or cohabiting partners should be declared.
- 7.8 If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman. 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.

7.9 **Register of Interests**

In accordance with paragraph 31 of the Constitution, the Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Director and Non-executive Directors, as defined in Standing Order 7.2.

- 7.10 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.
- 7.11 The Register will be available for inspection by members of the public.

8. DISABILITY OF CHAIRMAN AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 8.1 Subject to the following provisions of this Standing Order, if the Chairman or any member of the Board of Directors has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter, without the Chairman of the meeting's agreement, or vote on any question with respect to it.
- 8.2 The Board of Directors shall exclude the Chairman or a Director from a meeting of the Board of Directors while any contract, proposed contract or

other matter in which he/she has a pecuniary interest, is under consideration.

- 8.3 Any remuneration, compensation or allowances payable to a member by virtue of paragraph 11 of Schedules 3 and 4 to the National Health Service Act 2006 shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.4 For the purpose of this Standing Order the Chairman or a Director shall be treated, subject to SO 7.1 and SO 8.5, as indirectly having a pecuniary interest in a contract, proposed contract or other matter, if:
- a) he/she, or a nominee of him/her, 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 matters under consideration; or
 - b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and in the case of persons living together, the interest of one person shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 8.5 The Chairman or a member shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only because:
- a) of their membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
 - b) of an interest in any company, body or person with which he/she is connected as mentioned in SO 8.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.6 Where the Chairman or a Director:
- a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - b) the total nominal value of those securities does not exceed one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in

the consideration or discussion of the contract or other matter from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

- 8.7 Standing Order 8 applies to a committee or sub-committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such committee or subcommittee (whether or not they are also a member of the Board of Directors) as it applies to a member of the Board of Directors).

9. STANDARDS OF BUSINESS CONDUCT

9.1 Policy

Staff must comply with the Trust's detailed Standards of Business Conduct and Capability policy documents.

9.2 Interests of Officers in Contracts

If it comes to the knowledge of a Director of the Trust that a contract is which he/she has any pecuniary interest not being a contract to which he/she is himself/herself 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 Chief Executive of the fact that he/she is interested therein.

- 9.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of him/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared by staff to be entered in a register of interests of staff.

9.4 Canvassing of, and recommendations by, Members in relation to Appointments

Canvassing of members of the Board of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment by the Trust shall disqualify the candidate from 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.

- 9.5 A member of the Board of Directors shall not solicit for any person any appointment by the Board of Directors or recommend any person for such appointment, but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Board of Directors.

- 9.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

9.7 Relatives of Members of the Board of Directors

Candidates for any staff appointment shall when making application disclose in writing whether they are related to any member of the Board or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

9.8. The Chairman, and every Director of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that the Chairman, members or Director is aware. It shall be the duty of the Chief Executive or nominated Director to report to the Board of Directors any such disclosure made.

9.9 On appointment, the Chairman and members of the Board (and prior to acceptance of an appointment in the case of Directors) should disclose to the Board of Directors whether they are related to any other member or holder of any office under the Trust.

9.10 Where the relationship of a Director or another member of the Board or another member of the Trust is disclosed, the Standing Order headed (SO 8) shall apply (Disability of Directors in proceedings on account of pecuniary interest).

10. RESOLUTION OF DISPUTES WITH THE COUNCIL OF GOVERNORS

10.1 The Council of Governors has three main roles:

- a) Advisory – Communicating to the Board the wishes of members of the Council of Governors and the wider community
- b) Guardianship – Ensuring that the Trust is operating in accordance its Terms of Authorisation. In this regard it acts in a trustee role for the welfare of the organisation.
- c) Strategic – Advising on a longer term direction to help the Board effectively determine its policies.

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

- a) Note advice from, and consider the views of the Council of Governors
- b) Set the strategic direction and leadership of the Trust
- c) Ensure the Terms of Authorisation are complied with
- d) Set organisational and operational targets
- e) Assess, manage and minimise risk
- f) Assess achievement against the above objectives
- g) Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives
- h) Ensure that the highest standards of Corporate Governance are applied throughout the organisation

- 10.3 The disputes resolution procedure recognises the different roles of the Council of Governors and the Board as described above.
- 10.4 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, shall first endeavour through discussion with members of the Council of Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties.
- 10.5 Failing resolution under 10.4 above then the Board and the Council of Governors, shall, at its next formal meeting, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.6 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.7 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) of the Board and the Council of Governors, shall immediately or as soon as is practicable, communicate the outcome to the other party and deliver the Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.4 above shall be repeated.
- 10.8 If, in the opinion of the Chairman, or Deputy Chairman (if the dispute involves the Chairman) and the Board or the Council of Governors, and following the further discussion prescribed in 10.7, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board accordingly.
- 10.9 On the satisfactory completion of this disputes process the Board shall implement agreed changes.
- 10.10 On the unsatisfactory completion of this disputes process the view of the Board shall prevail.
- 10.11 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing the Independent Regulator of NHS Foundation Trusts that, in the Council of Governors' opinion, the Board has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the Terms of its Authorisation.

11. NOTIFICATION TO INDEPENDENT REGULATOR OF FOUNDATION TRUSTS AND COUNCIL OF GOVERNORS

The Board shall notify the Independent Regulator of Foundation Trusts and the Council of Governors of any major changes in the circumstances of the Trust which have made or could lead to a substantial change to its financial well being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of Authorisation. The need to notify the independent regulator and Governors will also apply in situations where amendments are proposed to the Constitution or its annexes.

12. BOARD PERFORMANCE

The Chairman, with the assistance of the Trust Secretary, shall lead, at least annually, a performance assessment process for the Board. This process should act as the basis for determining individual and collective professional development programmes for Directors.

13. TENDERING AND CONTRACT PROCEDURE

The procedure set out in the trusts Standing Financial Instructions should be adhered to in conjunction with the implementation of these Standing Orders for all tendering and contract procedures.

14. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

14.1 Custody of Seal

The Common Seal of the Trust shall be kept by the Chief Executive or nominated person in a secure place.

14.2 Sealing of Documents

The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee thereof or where the Board has delegated its powers.

14.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by any two as delegated by the Board – Chairman, Chief Executive, Director of Finance or Chief Operating Officer (or a nominated officer who shall not be from within the originating directorate).

14.4 The form of the attestation of documents shall be “The Common Seal of the South Tees Hospitals NHS Foundation Trust was hereto affixed in the presence of

14.5 Register of Sealing

An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who

shall have approved and authorised the document and attested the seal. A report of all sealing shall be made to the next Board of Directors meeting. (The report shall contain details of the seal number, the description of the document and date of sealing).

15. SIGNATURE OF DOCUMENTS

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

16. DISSEMINATION OF STANDING ORDERS

The Chief Executive is responsible for ensuring all existing Directors and officers, and all new appointees are notified of, and understand their responsibility within the Standing Orders.

ANNEX 9 – FURTHER PROVISIONS

Note 30

1. Indemnity

- 1.1 Members of the Council of Governors, the board of directors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be at the discretion of the Trust.
- 1.2 The Trust may purchase and maintain insurance against such liability for its own benefit and the benefit of the Council of Governors, the Board of Directors and the Trust Secretary.

2. Restrictions to Membership

Pursuant to paragraph 10.4 of the Constitution, the following conditions will apply and will exclude entry to membership and will cease any existing membership:

- 2.1 Persons under the age of 16 years.
- 2.2 Persons who have been involved in an incidence of violence against NHS staff, volunteers, other patients, visitors and facilities.
- 2.3 If a person has habitually and persistently and without reasonable grounds instituted complaints against the Trust and is classified as a vexatious complainant under the terms of the Trust policy.
- 2.4 If there are reasonable grounds, in the opinion of the Council of Governors, to believe that they have or are likely to act in a way detrimental to the interests of the Trust.
- 2.5 Persons dismissed from employment on the grounds of misconduct by an NHS employer or who have been removed from registration by the General Medical Council or Health Professions Council by reasons of misconduct.
- 2.6 Anyone who does not agree to abide by the Trust's core values, which can be found in the Trust's Integrated Business Plan, Integrated Governance Strategy and website.