

AUTHORISATION

of

SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

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



Signature:

A handwritten signature in blue ink, written over a dotted line.

1 March 2010

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PART 1 Authorisation

1. Monitor (“Monitor”), the Independent Regulator of NHS Foundation Trusts, in exercise of the powers conferred by section 35 of the National Health Service 2006 (“**the Act**”) and all other powers exercisable by Monitor, hereby authorises South Warwickshire General Hospitals NHS Trust to become an NHS Foundation Trust (“**the Trust**”), subject to the Conditions set out in Part 3 hereof.
2. This Authorisation shall come into force on 1 March 2010.
3. Subject to the provisions of sections 54 and 55 of the Act, this Authorisation shall be of unlimited duration.
4. This Authorisation is not assignable.
5. Monitor may vary the Conditions of this Authorisation.

PART 2 Interpretation and construction

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

PART 3 Conditions

1. Principal Purpose

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

2. General duty

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

3. Constitution

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

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

4. Compliance and enforcement

(1) The Trust shall comply with:

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

the Conditions of this Authorisation;

the terms of its constitution;

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

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

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

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

5. Governance

(1) The Trust shall ensure the existence of appropriate arrangements to provide representative and comprehensive governance in accordance with the Act and to maintain the organisational capacity necessary to deliver the mandatory

goods and services referred to in Condition 7(1) and listed in Schedule 2 and the mandatory education and training referred to in Condition 7(2) and listed in Schedule 3.

- (2) The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any guidance which may be issued by Monitor.

6. Health care and other standards

- (1) The Trust shall put and keep in place and comply with arrangements for the purpose of monitoring and improving the quality of health care provided by and for the Trust.
- (2) The Trust shall comply with statements of standards in relation to the provision of health care published by the Secretary of State under section 46 of the Health and Social Care (Community Health and Standards) Act 2003, as currently set out in the Department of Health publication Health and Social Care Standards and Planning Framework (July 2004) as may be amended from time to time.
- (3) If applicable, the Trust shall comply with any statements of standards with respect to social care services which the Secretary of State may issue from time to time.
- (4) If applicable, the Trust shall comply with any statements of standards with respect to security and risk management which the Secretary of State may issue from time to time.

7. Mandatory Services

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

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

8. Authorised Services

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

- (8) Any activities undertaken by the Trust, other than the provision of goods and services for purposes related to the provision of health care, shall be subject to any restrictions which may be imposed by Monitor in terms of section 43(3) of the Act.

9. Protection of property

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

10. Private health care

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

11. Limit on borrowing

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

12. Financial viability

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

13. Dividend payments on Public Dividend Capital

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

14. Information

The Trust shall disclose to Monitor and directly to any third parties as may be specified by the Secretary of State the information, if any, specified in Schedule 6 as may be varied from time to time and such other information as Monitor may from time to time require.

15. Entry and inspection of premises

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

16. Fees

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

17. Representative membership

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

18. Co-operation with other bodies

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

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

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

19. Emergency planning

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

20. Information technology

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

21. Audit committee

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

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

22. Audit

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

23. Public interest reporting

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

24. Notification

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

25. Information given to Parliament and to Members of Parliament

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

26. Co-operation and Competition Panel

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

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

Schedule 1

The Constitution (and Annexures)

March 2010

CONSTITUTION OF
SOUTH WARWICKSHIRE NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)

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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.

Council of Governors is the name the trust gives to its Board of Governors.

Constitution means this Constitution and all annexes to it.

Monitor is the Independent Regulator of NHS Foundation Trusts, as provided by Section 31 of the 2006 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.

the **Vice-Chairman** is the name the Trust gives to its deputy chairman

2. **Name**

The name of the foundation trust is South Warwickshire NHS Foundation Trust (the trust).

3. **Principal Purpose**

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

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 and

5.2 a staff 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 purposes of the trust otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. Those exercising functions in a voluntary capacity are not eligible to join the staff constituency but may join the public constituency subject to the membership conditions for that constituency.

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

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic Membership by Default – Staff

8.6 An individual who is:

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

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

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

9. Restriction on Membership

9.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

9.3 An individual must be at least 16 years old to become a Member of the Trust.

9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Further Provisions.

10. Council of Governors – Composition

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

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

10.3 The members of the Council of Governors, other than the appointed 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 3.

11. Council of Governors – Election of Governors

11.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules, using the single transferable vote method.

11.2 The Model Election Rules, as published from time to time by the Department of Health, form part of this constitution. The Model Election Rules current at the date of the Trust's authorisation are attached at Annex 4.

11.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 40 of the Constitution (Amendment of the Constitution). For the avoidance of doubt, the trust cannot amend the Model Rules.

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

12. Council of Governors - Tenure

12.1 An elected governor may hold office for a period of up to 3 years.

12.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

12.3 An elected governor shall be eligible for re-election at the end of his term.

12.4 An Appointed Governor may hold office for a period of up to 3 years.

12.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

12.6 An Appointed Governor shall be eligible for reappointment at the end of his term.

12.7 Further provisions as to tenure for appointed Governors are set out at Annex 5.

13. Council of Governors – Disqualification and Removal

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

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

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

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

13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

13.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

13.4 Provisions for the removal of Governors are made in Annex 5.

14. Council of Governors – Meetings of Governors

14.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 below) or, in his absence, the Vice-Chairman (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Council of Governors.

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

15. Council of Governors – Standing Orders

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

16. Council of Governors - Conflicts of Interest of Governors

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.

17. Council of Governors – Travel Expenses

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

18. Council of Governors – Further Provisions

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

19. Board of Directors – Composition

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

19.2 The Board of Directors is to comprise:

19.2.1 a non-executive Chairman

19.2.2 no fewer than 4 and no more than 6 other non-executive directors; and

19.2.3 no fewer than 4 and no more than 6 executive directors.

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

19.4 The Chief Executive shall be the Accounting Officer.

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

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

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

20. Board of Directors – Qualification for Appointment as a Non-Executive Director

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

20.1 he is a member of the Public Constituency, or

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

20.3 he is not disqualified by virtue of paragraph 26 below.

21. Board of Directors – Appointment and Removal of Chairman and other Non-Executive Directors

21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.

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

21.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 22 below.

22. Board of Directors – Appointment of Initial Chairman and Initial other Non-Executive Directors

22.1 The Council of Governors shall appoint the Chairman of the applicant NHS Trust as the initial Chairman of the trust, if he wishes to be appointed.

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

22.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 20 above (other than disqualification by virtue of paragraph 26 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

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

23. Board of Directors – Appointment of Vice-Chairman

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

24. Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors

24.1 The non-executive directors shall appoint or remove the Chief Executive.

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

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

24.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

25. Board of Directors – Appointment and Removal of Initial Chief Executive

25.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he wishes to be appointed.

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

26. Board of Directors – Disqualification

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

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

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

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

27. Board of Directors – Standing Orders

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

28. Board of Directors - Conflicts of Interest of Directors

If a director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered 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.

29. Board of Directors – Remuneration and Terms of Office

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

29.2 The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

30. Registers

The trust shall have:

30.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

30.2 a register of members of the Council of Governors;

30.3 a register of interests of governors;

30.4 a register of directors; and

30.5 a register of interests of the directors.

31. Admission to and Removal from the Registers

31.1 The Secretary (or officer acting on their behalf) shall make appropriate admissions and removals from the registers specified in paragraph 30 above.

32. Registers – Inspection and Copies

32.1 The trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

32.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.

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

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

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

32.4 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.

33. Documents Available for Public Inspection

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

33.1.1 a copy of the current constitution;

33.1.2 a copy of the current authorisation;

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

33.1.4 a copy of the latest annual report;

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

33.1.6 a copy of any notice given under section 52 of the 2006 Act.

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

33.3 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.

34. Auditor

34.1 The trust shall have an auditor.

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

35. 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.

36. Annual Accounts

36.1 The trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.

36.2 The accounts are to be audited by the trust's auditor.

36.3 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.

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

37. Annual Report and Forward Plans

37.1 The trust shall prepare an Annual Report and send it to Monitor.

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

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

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

38. 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:

38.1 the annual accounts

38.2 any report of the auditor on them

38.3 the annual report.

39. Instruments

39.1 The trust shall have a seal.

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

40. Amendment of the Constitution

No amendment shall be made to this constitution unless it has been approved by resolution of the Board of Directors, in consultation with the Council of Governors and it has been approved by Monitor. For the avoidance of doubt, any amendments to the annexes attached to this constitution must also be approved by Monitor.

Annex 1 – The Public Constituency

The Trust shall have four public constituency areas as follows:-

a) Warwick and Leamington Towns

Comprising the following electoral wards:

Warwick District Council Wards – Warwick North, Warwick South, Warwick West, Clarendon, Crown, Manor, Milverton, Brunswick and Willes

Minimum number of members – 20

b) Warwick District and Borders

Comprising the following electoral wards:

Warwick District Council Wards - Abbey, Bishops Tachbrook, Budbrooke, Cubbington, Lapworth, Leek Wootton, Park Hill, Radford Semele, St Johns, Stoneleigh, Whitnash

Solihull Metropolitan Borough Council Wards - Blythe, Meriden, Dorridge & Hockley Heath, Knowle

Coventry City Council Wards - Westwood, Wainbody, Earlsdon, Cheylesmore, Binley and Willenhall

Rugby Borough Council Wards - Dunchurch and Knightlow, Earl Craven and Wolston, Ryton-on-Dunsmore, Leam Valley

Daventry District Council Wards - Barby and Kilsby, Braunston

Minimum number of members – 20

c) West Stratford and Borders

Comprising the following electoral wards

Stratford District Council Wards - Alcester, Aston Cantlow, Bardon, Bidford and Salford, Claverdon, Henley, Kinwarton, Sambourne, Snitterfield, Stratford Alveston, Stratford Avenue and New Town, Stratford Guild and Hathaway, Stratford Mount Pleasant, Studley, Tanworth, Welford.

Wychavon District Council Wards - Harvington and Norton, Honeybourne and Pebworth, The Littletons

Minimum number of members – 20

c) East Stratford and Borders

Comprising the following electoral wards:

Stratford District Council Wards - Brailes, Burton Dassett, Ettington, Fenny Compton, Harbury, Kineton, Long Compton, Long Itchington, Quinton, Shipston, Southam, Stockton and Napton, Tredington, Vale of the Red Horse, Wellsbourne;

Daventry District Council Wards - Badby, Byfield

South Northants District Council Ward - Danvers and Wardoun

Cherwell District Council Wards - Cropredy, Wroxton, Hook Norton, Sibford

Cotswold District Council Wards - Campden-Vale, Moreton-in-Marsh, Fosseridge, Blockley

West Oxfordshire District Council Ward - Kingham Rollright and Enstone

Minimum number of members – 20

Annex 2 – The Staff Constituency

The Trust shall have one staff constituency comprising four classes as follows:-

- Medical and dental
- Nursing and midwifery (including unqualified staff)
- Clinical support staff (including scientific, technical and therapeutic groups)
- Non-clinical support staff (including managerial and administrative staff)

The minimum number for all classes is to be 20.

Annex 3– Composition of Council of Governors

Elected Governors – 19

Public Governors – 14

- Warwick and Leamington Towns Constituency - 4
- Warwick District and Borders Constituency – 4
- West Stratford and Borders Constituency – 3
- East Stratford and Borders Constituency - 3

Staff Governors – 5

- Medical and dental - 1
- Nursing and midwifery (including unqualified staff) - 2
- Clinical support staff (including scientific, technical and therapeutic groups) - 1
- Non-Clinical support staff (including managerial and administrative staff) - 1

Appointed Governors – 7

Statutory - 5

- Warwickshire Primary Care Trust (PCT) – 1
- Warwickshire County Council – 1
- Warwick District Council – 1
- Stratford District Council – 1
- The University of Warwick – 1

Partnership - 2

- GP Consortium - 1
- Warwickshire Community and Voluntary Action (CAVA Warwickshire) and Stratford on Avon Council for Voluntary Services (CVS Stratford) - 1

Total - 26

Annex 4

NHS foundation trusts (Board of Governors) Model Election Rules

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

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

The poll

- 26. Eligibility to vote
- 27. Voting by persons who require assistance
- 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
- stv54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

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

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

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

Part 1 - Interpretation

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

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

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

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

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

(2) Other expressions used in these rules and in Schedule 7 to the National Health Service Act 2006 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 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate – 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 spoiled ballot paper, the returning officer shall enter in a list (“the list of spoiled ballot papers”) –
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoiled ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.
- 29. Lost ballot papers** – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –
- (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original ballot paper, and
 - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper.
- 30. Issue of replacement ballot paper**– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

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

Procedure for receipt of envelopes

- 32. Receipt of voting documents** – (1) Where the returning officer receives a –
- (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –
- (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

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

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

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

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

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

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

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

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of 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 South Warwickshire

NHS Foundation Trust by section 4(4) of the 2006 Act, to the chairman of the NHS Trust, or

- (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate 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 South Warwickshire NHS Foundation Trust by section 4(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

(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

- 60. Meaning of “for the purposes of an election”** - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- (2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part 11 – Questioning elections and the consequence of irregularities

- 61. Application to question an election** – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by -
- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must –
- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

- (7) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- (8) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- (9) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
 - (ii) the unique identifier on any ballot paper,
 - (iii) the candidate(s) for whom any member has voted.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
 - (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

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

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

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or

- (d) employed by or on behalf of a person who has been nominated for election.

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

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

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

Annex 5 – Additional Provisions – Council of Governors

Elected Governors

1. A Public Governor shall hold office for a period of three years, except as otherwise provided in this Annex. An ordinary election, at which all Public Governor seats fall vacant and subject to election, shall be held at intervals of three years.
2. A Staff Governor shall hold office for a period of three years, except as otherwise provided in this Annex. An ordinary election, at which all Staff Governor seats fall vacant and subject to election, shall be held at intervals of three years.
3. Vacancies arising at other times, where a Governor resigns or becomes disqualified or is removed from office, shall be filled in accordance with paragraph 21 of this Annex 5.
4. An elected Governor may not hold office for more than six consecutive years.
5. If an elected Governor first takes office under the provisions of paragraph 21 (a) or (b) of this Annex less than one year before the next ordinary election, this initial period of office shall be disregarded for the purposes of the maximum tenure prescribed in paragraph 4 of this Annex.

Further Provisions as to Eligibility to be a Governor

6. A person may not become a Governor of the Trust, and if already holding office shall immediately cease to do so, if:
 - (a) they are a Director of the Trust or a Governor or director of an NHS body (unless they are appointed by one of the appointing organisations which is an NHS body);
 - (b) they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - (c) they are a member of a local authority's Scrutiny Committee covering health matters;
 - (d) being a member of the public constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
 - (e) on the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the Trust's Director responsible for Human Resources;
 - (f) they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;

- (g) they are a person whose tenure of office as the Chairman or as a member or director of an NHS 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;
- 7. A staff Governor whose employment has been suspended shall not be entitled to attend meetings of the Council of Governors in their capacity as a staff Governor. A staff Governor whose employment is suspended for more than six months shall cease to hold office.
- 8. In the event of dispute regarding a person's eligibility to become or continue as a Governor the Secretary shall convene an appeal panel comprising the Chairman and not less than two Non-Executive Directors to make a determination on the point at issue, and the decision of the appeal panel shall be final.

Termination of a Governor's Tenure

- 9. Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraphs 12 or 13 of the Constitution or under paragraphs 6, 7 or 8 of this Annex, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified.
- 10. If it comes to the notice of the Secretary that a Governor is disqualified under paragraphs 12 or 13 of the Constitution or under paragraphs 6, 7 or 8 of this Annex, whether at the time of the Governor's election or appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 days. In the event that the Governor shall dispute that he is disqualified the Governor may refer the matter to the appeal procedure set out in paragraph 8 of this Annex within 14 days of the date upon which the notice was given to the Governor.
- 11. A person holding office as a Governor shall immediately cease to do so if:
 - (a) they resign by notice in writing to the Secretary;
 - (b) they have failed within a reasonable period to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the code of conduct for Governors;
 - (c) they are removed from the Council of Governors under the following provisions.
- 12. A Governor may be removed from office by a resolution of the Council of Governors approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:
 - (a) they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:
 - the absences were due to reasonable causes, and

- they will be able to start attending meetings of the Council of Governors again within a reasonable period;

or

- (b) they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake; or
- (c) they have committed a serious breach of the code of conduct for Governors; or
- (d) they have acted in a manner detrimental to the interests of the Trust; or
- (e) it is not in the best interests of the Trust for them to continue as a Governor.

13. In the event of an allegation being made against a Governor on a matter which may render the Governor liable for removal from office under the provisions of paragraph 12 of this Annex, the Chairman shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned from meetings of the Council of Governors, to allow investigation of such allegation.

14. The Governor in question shall be notified in writing of the allegation, detailing the specific behaviour which is considered to be detrimental to the Trust and inviting his response within a defined and reasonable timescale.

15. If the matter cannot be resolved satisfactorily through correspondence, the Governor shall be invited to address the Council of Governors in person prior to any vote on a resolution to remove the Governor from office.

16. A Governor removed from office by resolution of the Council of Governors may appeal against removal in writing to the Secretary within 14 days of the date upon which notice of the Council of Governors' decision is given to the Governor concerned, and on receipt of such an appeal the Secretary shall follow the procedure set out in paragraph 8 of this Annex.

17. Upon resignation or disqualification or removal of a Governor, the Secretary shall cause his name to be removed immediately from the Register of Governors.

18. A Governor who resigns or is disqualified or removed from office shall not be eligible to be re-appointed or to stand for re-election as a Governor for a period of three years from the date of his resignation or disqualification or removal from office or the date upon which any appeal against his disqualification or removal from office is disposed of whichever is later.

Vacancies Amongst Governors

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

20. Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement.

21. Where the vacancy arises amongst the elected Governors, the Council of Governors shall at its discretion either:
- (a) invite the candidate for that seat at the most recent election who of those not elected received the highest number of first preference votes, who is willing to take office, to fill the seat until the next ordinary election; or
 - (b) hold a by-election within three months to fill the seat until the next ordinary election; or
 - (c) if the next ordinary election is due to be held within the period of six months commencing with the date on which the vacancy arises, leave the seat vacant until the next ordinary election.

Declaration

22. An elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the 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. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected Governors.

Annex 6 – Standing Orders for the Practice and Procedure of the Council of Governors

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1. INTRODUCTION

- 1.1 The South Warwickshire NHS Foundation Trust (“the Trust”) became a Public Benefit Corporation on 1 March 2010 following authorisation by the Independent Regulator of NHS Foundation Trusts (the “Independent Regulator” and the office now known as Monitor) pursuant to the National Health Service Act 2006 (the “2006 Act”).
- 1.2 The principal place of business of the Trust is currently at Lakin Road, Warwick, Warwickshire, CV34 5BW.
- 1.3 The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by the Independent Regulator (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.

2 DEFINITIONS

- 2.1 In these Standing Orders:

"Board of Directors"

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

"Chairman"

means the Chairman of the Council of Governors appointed in accordance with the Constitution to ensure that the Council of Governors and the Board of Directors successfully discharge their overall responsibilities for the Trust as a whole;

"Chief Executive"

means the Chief Executive of the Trust;

"Clear Day"

means a day of the week not including Saturday, Sunday or a public holiday;

"Constitution"

means the Constitution of the Trust;

"Vice-Chairman"

means one of the Non Executive Directors appointed by the Council of Governors, either generally or for a specific meeting, to preside at a meeting of the Council of Governors in the absence of the Chairman;

"Governor"

means a member of the Council of Governors elected or appointed as provided by the Constitution;

"Council of Governors"

means the Council of Governors as constituted in accordance with the Constitution which has the same meaning as the Board of Governors in the 2006 Act;

"Non-Executive Director"

means a Director, including the Chairman, who does not hold an executive office of the Trust;

"Executive"

means a person holding an office with responsibility for managing or performing the functions of the Trust;

"Officer"

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

"Secretary"

means a person appointed by the Trust in accordance with the Constitution to be the Trust Secretary to act independently of the Council of Governors to provide advice on Corporate Governance issues to the Board of Directors and the Chairman and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders.

- 2.2 Words importing the masculine gender include the feminine gender and words importing the singular include the plural, and vice versa.

3 THE COUNCIL OF GOVERNORS

- 3.1 The roles and responsibilities of the Governors are set out in the Constitution and also have effect as if incorporated into the Standing Orders.
- 3.2 In the performance of their roles and responsibilities, the Governors shall have regard to The NHS Foundation Trust Code of Governance published by Monitor as revised or superseded from time to time.

4 MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Admission of the Public

4.1.1 The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves that members of the public and representatives of the Press be excluded from all or part of a meeting on the grounds that:

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

4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believes are special reasons for excluding the public from the meeting in accordance with the Constitution.

4.1.2 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.

4.2 Calling Meetings

4.2.1 Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least 4 meetings in any year including:

4.2.1.1 an annual meeting in each year apart from the first year, when the Council of Governors are to receive and consider the annual accounts, any report by the Auditor and the annual report; and

4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

4.2.2 The Secretary may call a meeting of the Council of Governors at any time. If the Secretary refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Secretary does not call a meeting within 5 Clear Days after such requisition has been presented to him at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

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 authorised by the Chairman to sign on his behalf, shall be delivered to, or sent electronically or by post to the usual place of residence of every Governor, so as to be available to him at least 5 clear days before the meeting save in the case of emergencies. Before each

meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall, insofar as it is available, be displayed at the Trust's Headquarters at least 3 clear days before the meeting.

- 4.3.2 Want of service of the notice on any Governor shall not affect the validity of a meeting, but failure to serve the notice on more than three Governors shall invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.
- 4.3.3 In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.4 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be dispatched no later than 3 clear days before the meeting, save in the case of emergencies. Circulation by email is deemed acceptable for those Governors so agreeing.

4.4 Annual Meeting

- 4.4.1 The Council of Governors shall hold an annual meeting of the Council of Governors in every calendar year so that there is no more than fifteen calendar months between one meeting and the next and shall present to that meeting:
 - 4.4.1.1 A report on the proceedings of its meetings held since the last annual meeting;
 - 4.4.1.2 A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be members under the Constitution;
 - 4.4.1.3 A report on any change to the Governors which has taken place since the last annual meeting; and
 - 4.4.1.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding financial year and the future service development plans of the Trust.
- 4.4.2 The reports for the first annual meeting shall cover the period from the Authorisation of the Trust as a Foundation Trust to the date of that meeting.

4.5 Setting the Agenda

- 4.5.1 The Council of Governors may determine that certain matters shall appear on every Agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.5.2 A Member of the Council of Governors desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make his request in writing to the Chairman at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 clear days before a meeting may be included on the agenda at the discretion of the Chairman.

4.6 Petitions

- 4.6.1 Where a petition signed by not less than 1% of the Members has been received by the Trust, the Chairman shall include the petition as an item for the agenda of the next Council of Governors meeting.

4.7 Chairman of Meeting

- 4.7.1 At any Council of Governors meeting, the Chairman, if present, shall preside.
- 4.7.2 If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice-Chairman shall preside.
- 4.7.3 If the Vice-Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director as shall be appointed by the Council of Governors shall preside.

4.8 Agenda Proposals

- 4.8.1 Where a Governor has requested inclusion of a matter on the agenda in accordance with Standing Order 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 4.8 shall apply in respect of the proposition:
- 4.8.2 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 4.8.3 When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:
 - 4.8.3.1 an amendment to the proposition;
 - 4.8.3.2 the adjournment of the discussion or the meeting;
 - 4.8.3.3 that the meeting proceed to the next business;

- 4.8.3.4 the appointment of an ad hoc committee to consider and make recommendations on a specific item of business;
 - 4.8.3.5 that the motion be now put;
 - 4.8.3.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.
- 4.8.4 In the case of sub-paragraphs 4.8.3.3 and 4.8.3.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 4.8.5 No amendment to the proposition shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the proposition.
- 4.8.6 The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.

4.9 Chairman's Ruling

- 4.9.1 Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters of procedure shall be final.

4.10 Voting

- 4.10.1 A Governor may not vote at a meeting of the Council of Governors unless at the beginning of his tenure or at a time subsequent to that to be agreed by the Secretary, he has made a declaration in the form specified within Schedule A of these Standing Orders, that he is a member of the constituency which elected him and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution. Where a Governor's circumstances in respect of his declaration have changed, he shall make a new declaration in the form specified within Schedule A of these Standing Orders within seven days.
- 4.10.2 Subject to paragraph 4.10.4 below, every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question.
- 4.10.3 The Chairman of the meeting shall not ordinarily vote on any question or proposal before the meeting, but in the case of an equality of votes the Chairman shall have a casting vote.
- 4.10.4 A resolution for the removal of the Chairman or a Non-Executive Director shall be passed only if three quarters of the total number of Governors vote in favour of it.

- 4.10.5 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 Governors present so request.
- 4.10.6 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.10.7 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.10.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy.
- 4.10.9 In certain circumstances which must be approved in advance by the Council of Governors and which may be included in a Schedule to these Standing Orders, the Chairman may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three quarters of the Governors, and a majority of Governors who are members of the public constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice.

4.11 Minutes

- 4.11.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chairman presiding at 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.

4.12 Suspension of Standing Orders

- 4.12.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the public constituency of the Trust, and that a majority of those present vote in favour of suspension.
- 4.12.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 4.12.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Governors.
- 4.12.4 No formal business may be transacted while Standing Orders are suspended.

4.13 Variation and Amendment of Standing Orders

4.13.1 These Standing Orders shall be amended only if:

- 4.13.1.1 a notice of proposal under Standing Order 4.5.2 has been given;
and
- 4.13.1.2 no fewer than half the total number of Governors vote in favour of amendment; and
- 4.13.1.3 at least one half of the total number of Governors is present; and
- 4.13.1.4 the variation proposed has been approved by the Council of Governors and does not contravene a statutory provision.

4.14 Record of Attendance

4.14.1 The names of the Chairman and Governors present at the meeting shall be recorded in the minutes.

4.15 Quorum

4.15.1 No business shall be transacted at a meeting unless at least 9 Governors are present, including at least 5 Governors who are members of the public constituency, at least 2 Governors who are members of the staff constituency, and at least 1 appointed Governor.

4.15.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for 6 clear days and upon reconvening, those present shall constitute a quorum.

4.15.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 7 he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.16 Committees

4.16.1 The Council of Governors may appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Constitution and the Regulatory Framework.

4.16.2 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chairman" to be read as a reference to the Chairman of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits, except that where a Governor is Chairman of a committee that Governor shall be a voting member of the committee notwithstanding paragraph 4.10.3.

- 4.16.3 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework, but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 4.16.4 Any committee established under this Standing Order may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors in respect of any expenses thereby incurred.
- 4.16.5 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 4.16.6 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of traveling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.
- 4.16.7 The Council of Governors may, if so invited by the Board of Directors, appoint members to serve on joint committees with the Board of Directors or committees of the Board of Directors.

5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

5.1 Declaration of Interests

- 5.1.1 The Regulatory Framework and the Constitution require each Governor to declare to the Secretary:
- 5.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 5.2.1; and
 - 5.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 5.2.2 and 5.2.3; and
 - 5.1.1.3 any actual or potential family interest, direct or indirect, of which the Member is aware, as described in Standing Order 5.2.5.
- 5.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 clear days of becoming aware of the existence of that interest, and in such manner as the Secretary may prescribe from time to time.
- 5.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of

consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.

- 5.1.4 Subject to Standing Order 5.2.4, if a Governor has declared a pecuniary interest (as described in Standing Orders 5.2.2 and 5.2.3) he shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 5.1.5 This Standing Order 5 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, (whether or not he is also a Governor).
- 5.1.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

5.2 Nature of Interests

- 5.2.1 Interests which should be regarded as "relevant and material" are as follows:
 - 5.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 5.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
 - 5.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
 - 5.2.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 5.2.1.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
 - 5.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 5.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - 5.2.2.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

- 5.2.2.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 5.2.3 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 5.2.3.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
 - 5.2.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
 - 5.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 5.2.4 Where a Governor:
 - 5.2.4.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - 5.2.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
 - 5.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- 5.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of his.
- 5.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. 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.

5.3 Register of Governors

The Register of Governors shall list the names of Governors, their category of membership of the Council of governors and an address through which they may be contacted by the Secretary.

5.4 Register of Governors' Interests

The Secretary shall keep a Register of Interests of Governors, which shall contain the names of each Governor, whether he has declared any interest, and if so, the interest declared.

6 STANDARDS OF BUSINESS CONDUCT

6.1 Members of the Council of Governors shall comply with the Governors' Code of Conduct.

7 APPOINTMENTS AND RECOMMENDATIONS

7.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

7.2 The Chairman and every Governor shall disclose to the Secretary any relationship between himself and a candidate for appointment as a Director of the Trust of whose candidature that Governor is aware. It shall be the duty of the Secretary to report any such disclosure to the Council of Governors.

7.3 On appointment, a Governor shall disclose to the Council of Governors any relationship to another Governor or to a holder of any office in the Trust.

8 SENIOR INDEPENDENT DIRECTOR

8.1 The Council of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.

8.2 The role of the Senior Independent Director is as set out in the Trust's 'Senior independent Director job description', as amended from time to time.

9 MISCELLANEOUS

9.1 The Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands his responsibilities within these Standing Orders.

9.2 These Standing Orders including all documents having effect as if incorporated in them, shall be reviewed annually by the Board of Directors and the Council of Governors.

9.3 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 Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these Standing Orders to the Chairman as soon as possible.

Schedule A

Declaration to the Secretary of South Warwickshire NHS Foundation Trust

I hereby declare that I am at the date of this declaration:

- a) a member of the [Public/Staff] Constituency, and
- b) I am not prevented from being a member of the Council of Governors by reason of any provisions of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.

Signed:

Date

Annex 7 – Standing Orders for the Practice and Procedure of the Board of Directors

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INTRODUCTION

Statutory Framework

The South Warwickshire NHS Foundation Trust (the Trust) is a public benefit corporation authorised by the Independent Regulator of NHS Foundation Trusts under the National Health Service Act 2006.

The principal place of business of the Trust is: Warwick Hospital, Lakin Road, Warwick, CV34 5BW.

NHS Foundation trusts are governed by statute, mainly the National Health Service Act 2006, by their Constitution and by the terms of their authorisation by the Independent Regulator (the Regulatory Framework).

The functions of the Trust are conferred by the Regulatory Framework. As a body corporate the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee of patient's property held by the Trust on behalf of patients.

The Constitution requires the Board of Directors to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

1. INTERPRETATION

- 1.1 At any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive and Secretary).
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 or in a Regulation or Order made under that Act shall have the same meaning in this interpretation and in addition:
 - 1.2.1 "**Accounting Officer**" means the NHS Officer responsible and accountable for funds entrusted to the Trust. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
 - 1.2.2 "**Trust**" means "South Warwickshire NHS Foundation Trust.
 - 1.2.3 "**Board**" means the Board of Directors.
 - 1.2.4 "**Budget**" means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
 - 1.2.5 "**Budget holder**" means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.

- 1.2.6 **"Chairman of the Board (or Trust)"** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Vice-Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.
- 1.2.7 **"Chief Executive"** means the chief officer of the Trust.
- 1.2.8 **"Commissioning"** means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.
- 1.2.9 **"Committee"** means a committee or sub-committee created and appointed by the Board.
- 1.2.10 **"Committee members"** means persons formally appointed by the Board to sit on or to chair specific committees.
- 1.2.11 **"Contracting and procuring"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.
- 1.2.12 **"Council of Governors"** means the Council of Governors of the Trust as constituted by the Constitution.
- 1.2.13 **"Director of Finance"** means the Chief Financial Officer of the Trust.
- 1.2.14 **"Funds held on trust"** shall mean those funds, which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept. Such funds may or may not be charitable.
- 1.2.15 **"Nominated officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions
- 1.2.16 **"Non-Executive Director"** means a Director, including the Chairman, who does not hold an executive office at the Trust.
- 1.2.17 **"Executive"** means a person holding an office with responsibility for managing or performing the functions of the Trust.
- 1.2.18 **"Secretary"** means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chairman and monitor the Trust's compliance with the law, Standing Orders, and the Regulatory Framework.
- 1.2.19 **"SFIs"** means Standing Financial Instructions.
- 1.2.20 **"SOs"** means Standing Orders.

- 1.2.21 **"Vice-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.

2. THE TRUST

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 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.
- 2.3 The Trust has resolved that certain powers and decisions may only be exercised or made by the Trust in formal session. These powers and decisions are set out in Annex 9 – Schedule of Matters Reserved to the Board which has effect as if incorporated into the Standing Orders.
- 2.4 **The composition of the Board** shall be in accordance with the Constitution.
- 2.5 **Appointment of the Chairman and Directors** shall be in accordance with the Constitution.
- 2.6 **Terms of Office of the Chairman and Directors.** The Chairman and Non-Executive Directors are to be appointed for a period of office in accordance with the Constitution.
- 2.7 **Appointment of Vice Chairman.** For the purpose of enabling the proceedings of the trust to be conducted in the absence of the chairman, the Council of Governors may appoint a Non-Executive Director to be the Vice Chairman for such period, not exceeding the remainder of his terms as Non-Executive Director for the trust, as they may specify on appointing him. If the chairman is unable to discharge his office as Chairman of the trust the Vice-Chairman of the Board of Directors shall be the acting Chairman for the trust.
- 2.8 Any Non-Executive Director so elected may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman and the Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chairman in accordance with paragraph 2.8 above.
- 2.9 **Powers of Vice Chairman.** Where the Chairman of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairman owing to illness or any other cause, the Vice-Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform those duties, be taken to include references to the Vice-Chairman.
- 2.10 **Appointment and Powers of Senior Independent Director** – Subject to Standing Order 2.11 below, the Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director to be the Senior

Independent Director for such period, not exceeding the remainder of his term as a Member of the Board of Directors, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the Trust's 'Senior Independent Director job description', as amended from time to time by resolution of the Board of Directors.

- 2.11 Any Member of the Board of Directors so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The Board of Directors may thereupon in consultation with the Council of Governors appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of Standing Order 2.10 above.

3. MEETINGS OF THE TRUST

3.1 Calling meetings

- (1) Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.
- (2) The Chairman of the Trust may call a meeting of the Board at any time.
- (3) One third or more directors of the Board may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

3.2 Notice of Meetings and the Business to be transacted

- (1) Before each meeting of the Board a formal written notice of the time and place of the meeting shall be given to every director, or sent electronically or by post to the usual place of residence of each director, so as to be delivered at least five working days before the meeting. The notice shall be approved by the Chairman or by an officer authorised by the Chairman to approve it on his/her behalf. Failure to serve such a notice on more than three directors shall invalidate the meeting. A notice shall be presumed to have been delivered one day after sending.
- (2) The agenda shall be sent to directors at least 3 working days before the meeting (either in hard copy or electronically) and supporting papers shall accompany the agenda, save in emergency. Want of delivery of the agenda or papers to any director shall not affect the validity of a meeting.
- (3) In the case of a meeting called by directors in default of the Chairman calling the meeting, the notice shall be signed by those directors.
- (4) No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.4.
- (5) 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.

3.3 Notice of Motion

- (1) Subject to the provision of Standing Orders 3.5 'Motions: Procedure at and during a meeting' and 3.6 'Motions to rescind a resolution', a director of the Board wishing to move a motion shall send a written notice to the Secretary who will ensure that it is brought to the immediate attention of the Chairman.
- (2) The notice shall be delivered at least 10 clear days before the meeting. The Secretary shall include in the agenda for the meeting all notices so received that are in order and permissible under appropriate regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

3.4 Emergency Motions

Subject to the agreement of the Chairman, and subject also to the provision of Standing Order 3.5 'Motions: Procedure at and during a meeting', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

3.5 Motions: Procedure at and during a meeting

i) Who may propose

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

ii) Contents of motions

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

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

iii) Amendments to motions

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.

If there are several amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

iv) **Rights of reply to motions**

a) Amendments

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

b) Substantive/original motion

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

v) **Withdrawing a motion**

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

vi) **Motions once under debate**

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

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a member be not further heard;

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

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

3.6 Motion to Rescind a Resolution

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

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

3.7 Chairman of meeting

- (1) At any meeting of the Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice-Chairman (if the Board has appointed one), if present, shall preside.
- (2) If the Chairman and Vice-Chairman are absent, such Non-Executive Director as the members present shall choose shall preside.

3.8 Chairman's ruling

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

3.9 Quorum

- (i) No business shall be transacted at a meeting of the Board unless not less than two Executive Directors (one of whom must be either the Chief Executive or the Director of Finance) and not less than three Non-Executive Directors are present. The Chairman, if present, shall count as one of the Non-Executive Directors.
- (ii) An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- (iii) If the Chairman or a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO 7.9.2) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least two executive directors to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example when the board consider the recommendations from the Remuneration Committee).

3.10 Voting

- (i) Save as provided in Standing Orders 3.11 - Waiver of Standing Orders and 3.12 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of directors present and voting on the question. In the case of an equal vote, the person presiding (ie: the Chairman of the meeting) shall have a second, and casting vote.

- (ii) At the discretion of the Chairman all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- (iii) If at least one third of the directors present so request, the voting on any question may be recorded so as to show how each director present voted or did not vote (except when conducted by paper ballot).
- (iv) If a director so requests, his/her vote shall be recorded by name.
- (v) In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- (vi) An Officer who has been formally appointed to act up for an Executive director during a period of incapacity or temporarily to fill an Executive Director vacancy, under paragraph 11 or paragraph 15 of Annex 8, shall be entitled to exercise the voting rights of the Executive director.
- (vii) An Officer attending the Board meeting to represent an Executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.11 Waiver of Standing Orders

- (i) Except where this would contravene any statutory provision or the rules relating to the Quorum (SO 3.9), any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the whole number of the directors of the Board are present (including at least one executive director and one Non-Executive Director) and that a majority of those directors present signify their agreement to such waiver. The reason for the waiver shall be recorded in the Board's minutes.
- (ii) A separate record of matters discussed during the waiver of Standing Orders shall be made and shall be available to the Chairman and directors.
- (iii) The Audit Committee shall review every decision to waiver Standing Orders.

3.12 Variation and amendment of Standing Orders

These standing orders may be amended only as provided in paragraph 40 of the Constitution.

3.13 Record of Attendance

The names of the Chairman and directors present at the meeting shall be recorded.

3.14 Minutes

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1 Appointment of Committees

Subject to the Constitution and such directions as may be given by the Independent Regulator, the Board may appoint committees of the Trust.

The Trust shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees.

4.2 Applicability of Standing Orders to Committees

These Standing Orders, as far as they are applicable, shall apply to meetings of any committees established by the Board, and in such meetings the term "Chairman" is to be read as a reference to the chairman of the committee as the context permits.

4.3 Terms of Reference

Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

4.4 Delegation of Powers by Committees to Sub-Committees

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

4.5 Approval of Appointments to Committees

The Board shall approve the appointments to each of the committees which it has formally constituted.

4.6 Appointments for Statutory Functions

Where the Board is required to appoint persons to a committee and/or to undertake statutory functions as required by the Independent Regulator, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with applicable statute and regulations and with the guidance issued by the Independent Regulator.

4.7 Committees Established by the Board

The committees established by the Board are:

- (1) Audit Committee
- (2) Remuneration Committee

The Board may also establish such other committees as it sees fit to discharge the Trust's responsibilities.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1 Subject to such guidance as may be issued by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee of directors appointed by virtue of Standing Order 4, or by an Executive Director of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit.

5.2 Emergency Powers and urgent decisions

- 5.2.1 The powers which the Board has reserved to itself within these Standing Orders may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board.
- 5.2.2 The Chairman may convene at short notice a meeting of the Board to consider a matter requiring an urgent decision, and such a meeting shall be deemed to be a committee as provided in paragraph 5.3.2. Any decision to be made at such a meeting on a matter reserved to the Board shall be the responsibility of the Chairman and Chief Executive under the emergency powers provided in paragraph 5.2.1.
- 5.2.3 If the Chief Executive has a conflict of interest, his powers under this Standing Order may be exercised by the Deputy Chief Executive. If the Chairman has a conflict of interest, his powers under this Standing Order may be exercised by the Vice-Chairman.

5.3 Delegation to Committees

- 5.3.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by a committee of directors which it has formally constituted. The constitution and terms of reference of these committees and their specific executive powers shall be approved by the Board.
- 5.3.2 When the Board is meeting other than under the terms of section 3, it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Board in formal session.

5.4 Delegation to Officers

- 5.4.1 Those functions which have not been reserved to the Board or delegated to a committee of directors or a specified Executive Director shall 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 officers to undertake the remaining functions for which he/she will still retain accountability to the Board.
- 5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals for the delegation of powers not reserved to the Board, which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.
- 5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with any statutory requirements. Outside these statutory requirements the role of the Director of Finance shall be accountable to the Chief Executive for operational matters.

5.5 Schedule of Matters Reserved to the Board

- 5.5.1 The arrangements made by the Board as set out in Annex 9 – Schedule of Matters Reserved to the Board” shall have effect as if incorporated in these Standing Orders.

5.6 Duty to report non-compliance with Standing Orders

If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance shall be reported to the next formal meeting of the Board for action or ratification. All directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

6. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

- 6.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all aspects and in particular in relation to the following matters which are set out specifically within the constitution.
- 6.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the trust’s forward planning in respect of each financial year to be given to the Independent Regulator.
- 6.3 The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report.

- 6.4 The annual reports are to give:
- 6.4.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituency is representative of those eligible for such membership, and
- 6.4.2 any other information required by the Independent Regulator.

7. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of Interests

The regulatory framework requires board directors to declare interests, which are relevant and material to the foundation trust of which they are a director. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment.

7.2 Interests which should be regarded as relevant and material are:

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- b) Ownership, part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- d) A position of authority in a charity or voluntary organisation in the field of health and social care;
- e) Any connection with a voluntary or other organisation contracting for NHS services;
- f) Research funding/grants that may be received by an individual or their department;
- g) Interests in pooled funds that are under separate management.
- h) Any connection with an organisation, entity or company considering entering into a financial arrangement with the trust, including but not limited to, lenders or banks.

- 7.3 A director who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in Standing Order 8.5 below and elsewhere) has any pecuniary interest, direct or indirect, shall declare his/her interest by giving notice in writing of such fact as soon as practicable.

7.4 Advice on Interests

If directors have any doubt about the relevance of an interest, this should be discussed with the Chairman of the Trust.

7.5 Recording of Interests in Board Minutes

At the time directors' interests are declared, they should be recorded in the Board minutes.

Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.

7.6 Publication of declared interests in the Annual Report

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

7.7 Conflicts of interest which arise during the course of a meeting

During the course of a Board meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with SO 7.3)

7.8 Register of Interests

7.8.1 In accordance with the constitution, the Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests (as defined in SO 7.2) which have been declared by both executive and non-executive Board directors.

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

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

7.9 Exclusion of Chairman and Directors in proceedings on account of pecuniary interest

7.9.1 Definition of terms used in interpreting 'Pecuniary' interest

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

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

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

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

iv) Exception to Pecuniary interests

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

- a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or
- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

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

7.9.2 Exclusion in Proceedings of the Board

- (i) Subject to the following provisions of this Standing Order, if the Chairman or a director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose

the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

- (ii) The Board may exclude the Chairman or a director from a meeting of the Board while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under consideration.
- (iii) Any remuneration, compensation or allowance payable to the Chairman or director by virtue of paragraph 18 of Schedule 7 to the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- (iv) This Standing Order applies to a committee or sub-committee as it applies to the Board and applies to a member of any such committee or sub-committee (whether or not he/she is also a director).

8. STANDARDS OF BUSINESS CONDUCT

8.1 Policy

Directors and officers shall comply with the Trust's Code of Conduct and the national guidance contained in HSG(93)5 on 'Standards of Business Conduct for NHS staff' and the 'Code of Conduct for NHS Managers 2002'.

8.2 Interest of Directors and Employees in Contracts

- i) Any director or officer of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in SO 8.5) has any pecuniary interest, direct or indirect, the individual shall declare their interest by giving notice in writing of such fact to the Chief Executive or Secretary as soon as practicable.
- ii) A director or officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- iii) The Trust will require interests, employment or relationships so declared by directors to be entered in the register of directors' interests.

8.3 Canvassing of and Recommendations by Directors in Relation to Appointments

- i) Canvassing of directors or members of any Committee of the Board directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- ii) A director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a director from giving written testimonial of

a candidate's ability, experience or character for submission to the Trust, in relation to any appointment

8.4 Relatives of Directors or Officers

- i) A director shall disclose to the Chief Executive any relationship between himself and a candidate for an appointment under the Trust of whose candidature that director is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- ii) A director on appointment (and prior to acceptance of an appointment in the case of an Executive Director) shall disclose to the Board any relationship to another director or to a holder of any office in the Trust.

8.5 Persons Connected with Directors

For the purposes of these Standing Orders, a person is connected with a Director if he or she is:

- i) a cohabiting spouse, civil partner or common law husband or wife ("life partner") of the Director; or
- ii) a cohabiting child, adopted or step-child or any other cohabiting relative of the Director or his or her life partner.

9. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

9.1 Custody of Seal

The common seal of the Trust shall be kept by the Chief Executive or a nominated officer by him/her in a secure place.

9.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of the Chief Executive and one other Executive Director or two Executive Directors duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

9.3 Register of Sealing

The Chief Executive shall keep a register in which he/she, or another manager of the trust authorised by him/her, shall enter a record of the sealing of every document.

9.4 Signature of documents

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

In land transactions, the signing of certain supporting documents will be delegated to officers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

10. REVIEW OF STANDING ORDERS

Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having effect as if incorporated into these Standing Orders.

Annex 8 – Miscellaneous Provisions

Eligibility for Membership

1. An individual may not become a Member of the Trust if they are under 16 years of age.
2. An individual may not become or continue as a Member of the Trust if within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against any of the Trust's registered volunteers.
3. In the event of dispute about a person's eligibility for membership of the Trust the dispute shall be referred to the Secretary who shall make a determination on the point at issue. If the person is dissatisfied with the decision of the Secretary he may appeal in writing within 14 days of the decision to the Council of Governors, whose decision shall be final.

Termination of Membership

4. A Member shall cease to be a Member if:
 - (a) they resign by notice to the Secretary;
 - (b) they die;
 - (c) they are expelled from membership under this Constitution;
 - (d) they cease to be entitled under this Constitution to be a Member of the public constituency or of any of the classes of the staff constituency.
5. It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A Member who becomes aware of their ineligibility shall inform the Trust as soon as practicable and that Member's name shall thereupon be removed from the Register of Members and they shall cease to be a Member.

Expulsion from Membership

6. A Member may be expelled by a resolution approved by not less than two-thirds of the Council of Governors present and voting at a general meeting. The following procedure is to be adopted:
 - (a) Any Member may complain to the Secretary in writing (signed by the complainant) that another Member has acted in a way detrimental to the interests of the Trust.

- (b) The Secretary shall report the complaint to the Council of Governors, or to an appropriate sub-committee of the Council of Governors, which shall consider the complaint and, having taken such advice and made such enquiries as it considers appropriate, may either:
 - (i) dismiss the complaint and take no further action; or
 - (ii) instruct the Secretary to write to the Member complained of to explain the concerns arising from the complaint but that no further action is being taken; or
 - (iii) temporarily suspend the membership rights of the Member complained of, and arrange for a resolution to expel the Member complained of to be considered at the next general meeting of the Council of Governors.
 - (c) If a resolution to expel a Member is to be considered at a general meeting of the Council of Governors, details of the complaint shall be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
 - (d) At the meeting the Council of Governors shall consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
 - (e) If the Member complained of fails to attend the meeting without due cause the meeting may proceed in his absence.
 - (f) The Member complained of shall cease to be a Member upon the declaration of the Chairman of the meeting that the resolution to expel the Member is carried.
 - (g) If the resolution to expel the Member is not carried, the membership rights of the Member shall be restored with immediate effect.
7. No person who has been expelled from membership shall be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting.

'Director'

8. The Trust may confer on a senior officer the title 'Director' as an indication of his corporate responsibility within the Trust and not in one of the specific roles prescribed in paragraph 19 of the Constitution. Such an officer shall not be an Executive Director of the Trust within the meaning of the 2006 Act and this Constitution unless so determined by resolution of the Board.

Absent Directors

9. If:
- (a) an Executive Director is temporarily unable to perform his/her duties owing to illness or some other reason for absence, and

- (b) the Board of Directors agrees that it is inappropriate to terminate the absent director's term of office and appoint a replacement director, and
- (c) the Board of Directors agree that the duties of the absent director need to be carried out;

Then the Chairman (if the absent director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting director as an additional director to carry out the absent director's duties temporarily.

- 10. The acting director shall be an Executive Director for the purposes of the 2006 Act. He shall be responsible for his own acts and defaults and shall not be deemed to be the agent of the absent director.
- 11. For any period in which an acting director holds office, having been appointed under paragraph 9 of this Annex, the absent director shall not exercise the duties and powers of an Executive Director.
- 12. The acting director shall vacate office as soon as the absent director returns to office or, if earlier, the date on which the person entitled to appoint him under paragraph 9 notifies him that he is no longer to act as an acting director.

Vacant Positions

13. If:

- (a) an Executive Director post is vacant, and
- (b) the Board of Directors agrees that the vacant position needs to be filled by an interim postholder pending appointment of a permanent postholder;

then a committee comprising the Chairman and the Non-Executive Directors (if the vacant position is Chief Executive) and the Chief Executive (in any other case) may appoint another person as an interim director to fill the vacant position pending appointment of a permanent postholder.

- 14. The interim director shall be an Executive Director for the purposes of the 2006 Act.
- 15. The interim director shall vacate office on the appointment of a permanent postholder or, if earlier, the date on which the Chairman (in the case of an interim Chief Executive) or the Chief Executive (in any other case) notifies him that he is no longer to act as an interim director.

Indemnity

- 16. Members of the Council of Governors and the Board of Directors and the 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 functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

17. The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and the Board of Directors and the Secretary.

Appointment of Chief Executive

18. In the event that a new Chief Executive is to be appointed the Chairman shall convene a joint nominations committee, comprising the Non-Executive Directors and an equal number of Governors, to review the applications for the position and agree a short list of acceptable candidates.
19. The Chairman shall invite the Council of Governors to nominate one Governor to be a member of the panel to interview the short-listed candidates.
20. An appointments committee comprising the Chairman and the Non-Executive Directors shall receive the recommendation of the interview panel and determine which candidate (if any) is to be appointed.
21. The appointment shall be submitted for approval at the next general meeting of the Council of Governors.

Secretary

22. The Trust shall have a Secretary, whose function shall be to ensure compliance with proper corporate governance procedures and to support and advise the Board of Directors and the Council of Governors. The Secretary may be an employee but shall not be a Governor or a Director.
23. The Secretary is to be appointed and removed by the Chairman and Chief Executive acting jointly.

Annex 9 – Schedule of Matters Reserved to the Board

General Enabling Provision

The Board may determine any matter for which the Trust has statutory authority, subject to the Trust's Terms of Authorisation, including at its discretion any matter that the Board has delegated to a committee or a director.

Matters Reserved to the Board

The powers and duties set out below in this Annex shall not be delegated by the Board, and shall be exercised only by the Board meeting formally in accordance with section 3 of Standing Orders (SOs).

1. Regulation and Control

- (a) Approve any proposed amendment to the Constitution or an Annex to the Constitution, to be submitted for approval by the Independent Regulator.
- (b) Suspend Standing Orders, subject to SO 3.11.
- (c) Ratify any urgent decision taken by the Chairman and Chief Executive in accordance with SO 5.2.
- (d) Approve Standing Financial Instructions for the regulation of the Trust's business.
- (e) Approve a Scheme of Delegation of powers from the Board to committees and directors.
- (f) Require and receive the declaration of Board members' interests that may conflict with those of the Trust and determine the extent to which a member may remain involved with a matter under consideration.
- (g) Require and receive the declaration of officers' interests that may conflict with those of the Trust.
- (h) Approve arrangements for dealing with complaints.
- (i) Adopt the structure of the organisation at major divisional/departmental level and the job descriptions of Executive Directors, and approve modifications thereto.
- (j) Define terms of reference and reporting arrangements for all committees and sub-committees that are established by the Board.
- (k) Receive reports from committees, including those that the Trust is required by statute or regulatory authority to establish, and take appropriate action thereon.
- (l) Approve the recommendations of the Trust's committees where the committees do not have the relevant executive powers.
- (m) Approve arrangements relating to the discharge of the Trust's responsibilities as a corporate trustee for funds held on trust.
- (n) Approve arrangements relating to the discharge of the Trust's responsibilities as a bailer for patients' property.
- (o) Authorise use of the seal.

- (p) Ratify or otherwise any action taken in breach of Standing Orders brought to the Chief Executive's attention in accordance with SO 5.6.
- (q) Determine the action to be taken against any member of the Board who has acted in breach of SOs or Standing Financial Instructions.
- (r) Approve statutory declarations to regulatory bodies in the name of the Trust.

2. Appointments/Dismissal

- (a) Appoint the Senior Independent Director.
- (b) Determine which officer appointments, other than those prescribed in paragraph 19 of the Constitution, have the standing of Executive Director.
- (c) Appoint and dismiss the members of committees that are directly accountable to the Board.
- (d) Appoint or rescind the appointment of officers as members of outside bodies where their role is to represent the views or intentions of the Trust.
- (e) Approve the appointment and removal of Internal Auditors.

3. Strategy, Plans and Budgets

- (a) Define the strategic aims and objectives of the Trust.
- (b) Approve the Trust's policies and procedures for the management of risk.
- (c) Approve annual income and expenditure budgets and annual capital expenditure budgets.
- (d) Approve any proposal for unbudgeted revenue expenditure, write off of losses or special payment amounting to, or likely to amount to, more than 0.5% of the Trust's annual revenue expenditure budget.
- (e) Approve any proposal for acquisition, disposal or change of use of land and/or buildings.
- (f) Approve any PFI proposals.
- (g) Approve the opening of bank accounts.
- (h) Approve any proposal for a capital investment project amounting to or likely to amount to more than 1% of the Trust's annual revenue expenditure budget.
- (i) Approve any proposal for a contract for provision or procurement of supplies or services of a capital or revenue nature, amounting to or likely to amount to more than 1% of the Trust's annual revenue expenditure budget.
- (j) Approve any proposal for a partnership agreement whereby the Trust makes an arrangement with another body or bodies for joint provision of a service or for other joint activity where benefits and risks are shared.
- (k) Approve any proposal for action on litigation against or on behalf of the Trust.
- (l) Review the use of NHSLA or other risk pooling schemes.

4. Annual Reports and Accounts

- (a) Approve the Trust's Annual Report, Annual Accounts and Statement of Internal Control.
- (b) Approve the Annual Report and Accounts for funds held on trust.

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

Schedule 2

Mandatory Goods and Services

Year: 2009-10

Code	Specialty	Emergency Spells	Elective Spells	Day case Spells	A&E Attendances	Outpatient Attendances	Critical Care Bed Days	Other Attendances
100	General surgery	2,452	832	2,185	-	6,259	-	-
101	Urology	128	504	1,824	-	5,805	-	-
110	Trauma and orthopaedics	1,270	1,478	2,066	-	32,154	-	-
120	Ear, nose and throat (ENT)	214	581	481	-	10,579	-	-
130	Ophthalmology	3	23	2,241	-	28,682	-	-
140	Oral surgery	-	7	572	-	2,489	-	-
141	Restorative dentistry	-	-	-	-	2	-	-
143	Orthodontics	-	-	-	-	2,836	-	-
160	Plastic surgery	1	-	372	-	1,962	-	-
171	Paediatric surgery	-	-	-	-	11	-	-
180	Accident and emergency (A&E)	-	-	-	-	1,879	-	-
190	Anaesthetics	15	-	-	-	401	-	-
200	ITU	-	-	-	-	-	2,452	-
300	General medicine	6,736	74	614	-	1,830	-	-
301	Gastroenterology	433	148	1,056	-	3,781	-	-
302	Endocrinology	1	1	41	-	1,894	-	-
303	Clinical haematology	41	118	2,390	-	4,691	-	-
311	Clinical genetics	-	-	-	-	119	-	-
320	Cardiology	775	121	601	-	4,776	-	-
321	Paediatric cardiology	2	2	1	-	-	-	-
330	Dermatology	24	2	644	-	17,344	-	-
340	Thoracic medicine	321	37	172	-	4,926	-	-
350	Infectious diseases	-	-	1	-	-	-	-
360	Genito-urinary medicine	-	-	-	-	-	-	8,451
400	Neurology	-	-	-	-	2	-	-
410	Rheumatology	31	15	313	-	5,419	-	-
420	Paediatrics/SCBU	2,414	25	98	-	4,801	2,636	-
430	Geriatric medicine	5	-	-	-	714	-	-
501	Obstetrics	5,288	-	-	-	6,775	-	-
502	Gynaecology	748	539	1,842	-	6,681	-	-
560	Midwifery	185	-	-	-	3,328	-	-
800	Clinical oncology (previously Radiotherapy)	8	17	439	-	3,777	-	-
103	Breast Surgery	5	145	67	-	5,186	-	-
104	Colorectal Surgery	10	7	158	-	3,022	-	-
107	Vascular Surgery	2	-	1	-	44	-	-
191	Pain Management	-	7	1,074	-	935	-	-
306	Hepatology	-	-	-	-	5	-	-
307	Diabetes Care	-	-	-	-	2,120	-	-
319	Respite	-	-	-	-	8	-	-
214	Paediatric Trauma And Orthopaedics	-	-	-	-	11	-	-
215	Paediatric Ear Nose And Throat	-	-	-	-	10	-	-
216	Paediatric Ophthalmology	-	-	-	-	779	-	-
253	Paediatric Clinical Haematology	-	-	-	-	886	-	-
257	Paediatric Dermatology	-	-	-	-	6	-	-
	A&E Attds	-	-	-	49,688	-	-	-
	Physiotherapy discrete OP (non direct access)	-	-	-	-	-	-	25,062
	Occupational therapy discrete OP (non direct access)	-	-	-	-	-	-	6,959
	Dietetics discrete OP (Non direct access)	-	-	-	-	-	-	2,183
	Psychology discrete OP (non direct access)	-	-	-	-	-	-	612
	Direct Access Dietetics	-	-	-	-	-	-	1,991
	Direct Access Physiotherapy	-	-	-	-	-	-	25,615
	Direct Access Occupational Therapy	-	-	-	-	-	-	3,344
	Direct Access Psychology	-	-	-	-	-	-	1,154
	Community Midwifery	-	-	-	-	-	-	31,223
	Direct Access Radiology	-	-	-	-	-	-	34,285
	Anti Coag/DVT	-	-	-	-	-	-	18,422
	Direct Access Audiology	-	-	-	-	-	-	23,530
	Other Physio	-	-	-	-	-	-	739
	Cardiac pacemakers	-	-	-	-	-	-	992
	Telemed	-	-	-	-	-	-	3,233
	Orthoptics	-	-	-	-	4	-	-
Total		21,112	4,683	19,253	49,688	176,933	5,088	187,795

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

Schedule 3

Mandatory Education and Training

Commissioning body	Educational body	Contract Length (Years)	Expiry date of contract	Student group	Type of training	Number of Students	Contract Value (£000s)
NHS West Midlands	Workforce Deanery	3 years	31st March 2012	Doctors in Training	Medical	106	2350
NHS West Midlands	Warwick Medical School	3 years	31st March 2012	Medical Students	Medical	2680	2624
NHS West Midlands	NHS West Midlands	3 years	31st March 2012	Nursing Midwifery	Nursing/ Midwifery	10	169
NHS West Midlands	NHS West Midlands	3 years	31st March 2012	Pharmacy Trainees	Pharmacy	5	119
NHS West Midlands	NHS West Midlands	3 Years	31st March 2012	Audiology Trainees	Audiology	1	18
NHS West Midlands	NHS West Midlands	3 years	31st March 2012	Physiotherapy Trainees	Physiotherapy	1	14
The agreements are for 3 years. The training numbers and contract value are reviewed annually							

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

Schedule 4

Private Health Care

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

PRIVATE HEALTH CARE

In 2002/03 the proportion of the total patient income derived from private health charges was 1.3%

Pursuant to section 44 of the Act and Condition 10 of this Authorisation the proportion of total income of the Trust in any financial year derived from private charges shall not be greater than 1.3%.

DEFINITION:

Private patient income

Total patient
related income

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

Schedule 5

Limit on Borrowing

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

PRUDENTIAL BORROWING LIMIT

Pursuant to section 46 of the Act and the Prudential Borrowing Code, the Prudential Borrowing Limit for the year 2009/10 is the sum of the following:

- (i) Maximum cumulative long term borrowing Tier 1: £ 8.9 million;
- and
- (ii) Approved working capital facility: not to exceed £ 9.8 million.

AUTHORISATION OF SOUTH WARWICKSHIRE NHS FOUNDATION TRUST

Schedule 6

Information

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