

# **Stockport NHS Foundation Trust**

## **Constitution**

As approved by the Council of Governors on 8 July 2014 and the Board of Directors on 26 June 2014 and thus taking effect from 8 July 2014.

## **Stockport NHS Foundation Trust Constitution**

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## **1. Interpretation and definitions**

- 1.1** Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2** References in this constitution to legislation include all amendments, replacements or re-enactments made.
- 1.3** Words importing the singular shall import the plural and vice-versa.

### **1.4 Notices**

- 1.4.1** Any notice required by this constitution to be given means a notice in writing or a notice given using electronic communications to an address for the time being notified for that purpose. “Address” in relation to electronic communications includes any number or address used for the purposes of such communications.
- 1.4.2** Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

- 1.5** In addition, in this constitution:

**the 2006 Act** is the National Health Service Act 2006;

**the 2012 Act** is the Health and Social Care Act 2012;

**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;

**Annual Members Meeting** is defined in paragraph 13 of the constitution;

**Appointed Governors** means those Governors appointed by the Trust in discussion with appointing organisations;

**appointing organisations** means those organisations named in this constitution who are entitled to appoint Governors;

**Board of Directors** means the Board of Directors as constituted in accordance with this constitution;

**constitution** means this document and all annexes to it;

**Council of Governors** means the Council of Governors as constituted in accordance with this constitution;

**Director** means a member of the Board of Directors

**Elected Governors** means those Governors elected by the Public Constituencies and the Staff Constituency;

**financial year** means a period beginning on 1 April and finishing on the following 31 March;

**Local Authority Governor** means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the area of the Trust;

**member** means a member of the Trust;

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

**NHS provider licence** means licence number 130114 issued by Monitor to the Trust on 1 April 2013;

**Public Governor** means a member of the Council of Governors elected by the members of one of the public constituencies;

**Trust Secretary** means the Secretary of the Trust or any other person appointed to perform the duties of the Trust Secretary, including a joint, assistant or deputy secretary;

**Staff Governor** means a member of the Council of Governors elected by the members of one of the classes of the staff constituency;

**the Trust** is defined in paragraph 2 of the constitution.

## **2. Name**

The name of the foundation trust is Stockport NHS Foundation Trust ("the Trust").

## **3. Principal purpose**

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

#### **4. Powers**

- 4.1** The powers of the Trust are set out in the 2006 Act.
- 4.2** All 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**

- 5.1** The Trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 5.1.1** a public constituency; or
  - 5.1.2** a staff constituency.
- 5.2** The Trust Secretary shall make the final decision about which constituency or to which class an individual is eligible to be a member.

#### **6. Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust in the form specified by the Council of Governors.

#### **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 for a public constituency are referred to collectively as a Public Constituency.

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

## **8. Staff Constituency**

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

**8.1.1** He/she 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/she 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 under a contract of employment with a body other than the Trust may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Trust on a voluntary basis.

- 8.3** Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

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

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

## **9. Automatic membership by default – staff**

An individual who is:

- 9.1** eligible to become a member of the Staff Constituency; and
- 9.2** 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/she informs the Trust that he/she does not wish to do so.

## **10. Restriction on membership**

- 10.1** The members of the Trust are those individuals whose names are entered in the register of members.
- 10.2** 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.
- 10.3** 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.
- 10.4** An individual must be at least eleven years old to become a member of the Trust.
- 10.5** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9 – Further Provisions.

## **11. Annual Members' Meeting**

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

## **12. Council of Governors – composition**

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

## **13. Council of Governors – election of governors**

- 13.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on a Single Transferable Vote basis.
  
- 13.2** The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust's authorisation are attached at Annex 4.
  
- 13.3** 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 **Error! Reference source not found.** of the constitution (amendment of the constitution).

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

#### **14. Council of Governors - tenure**

- 14.1 An elected governor may hold office for a period not exceeding three years commencing immediately after the annual members meeting at which their election is announced.
- 14.2 An elected governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.
- 14.3 An elected governor shall be eligible for re-election at the end of his/her term.
- 14.4 An appointed governor may hold office for a period not exceeding three years commencing immediately after the annual members meeting at which their appointment is announced.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of his/her term.
- 14.7 For the purposes of these provisions concerning terms of office for Governors, “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

## **15. Council of Governors – disqualification and removal**

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

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

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

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

**15.1.4** 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.

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

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

## **16. Council of Governors – duties of governors**

**16.1** The general duties of the Council of Governors are:

**16.1.1** to hold the non-executive Directors individually and

collectively to account for the performance of the Board of Directors, and

- 16.1.2** to represent the interests of the members of the trust as a whole and the interests of the public.

- 16.2** The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

## **17. Council of Governors – meetings of governors**

- 17.1** The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with this constitution) or, in his/her absence, the Deputy Chairman (appointed in accordance with the provisions of this constitution), or, in his or her absence, one of the non-executive Directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors will chair that part of the meeting.

- 17.2** Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or for other special reasons. The Chairman may exclude members of the public from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

- 17.3** For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

## **18.Council of Governors – standing orders**

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

## **19.Council of Governors – referral to the Panel**

**19.1** In this paragraph, “the Panel” means a panel of persons appointed by Monitor to which a governor of the Trust may refer a question as to whether the Trust has failed or is failing:

**19.1.1** to act in accordance with its constitution; or

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

**19.2** A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

## **20.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 and Trust Secretary as soon as he/she 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.

## **21.Council of Governors – travel expenses**

Governors are not to receive remuneration although the Trust may reimburse Governors for travelling and other costs and expenses at such rates as it may

determine. Any such reimbursement must be disclosed in the annual report.

## **22. Council of Governors – further provisions**

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

## **23. Board of Directors – composition**

**23.1** The Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors.

**23.2** The Board of Directors is to comprise:

**23.2.1** a non-executive chairman;

**23.2.2** six other non-executive directors; and

**23.2.3** six executive directors.

**23.3** One of the executive directors shall be the Chief Executive.

**23.4** The Chief Executive shall be the Accounting Officer.

**23.5** One of the executive directors shall be the finance director.

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

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

#### **24. Board of Directors – general duty**

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

#### **25. Board of Directors – qualification for appointment as a non-executive director**

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

- 25.1** he/she is a member of a Public Constituency and
- 25.2** he/she is not disqualified by virtue of paragraph 29 below.

#### **26. Board of Directors – appointment and removal of chairman and other non-executive directors**

- 26.1** 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.
- 26.2** Removal of the chairman or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.

#### **27. Board of Directors – appointment of deputy chairman and Senior Independent Director**

- 27.1** The Council of Governors shall appoint one of the non-executive Directors to be the Deputy Chairman of the Board of Directors. If the Chairman is unable to discharge their office as Chairman of the Trust, the Deputy Chairman of the Board of Directors shall be acting Chairman of the Trust.

- 27.2** The Board of Directors may appoint a non-executive Director as a Senior Independent Director. The Senior Independent Director may be the Deputy Chairman.
- 27.3** Any appointment of a Senior Independent Director pursuant to the preceding paragraph shall require the approval of the Council of Governors.

**28. Board of Directors - appointment and removal of the Chief Executive and other executive directors**

- 28.1** The non-executive Directors shall appoint or remove the Chief Executive.
- 28.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3** A committee consisting of the Chairman, the Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors.
- 28.4** The Chief Executive may appoint one of the executive Directors as Deputy Chief Executive in consultation with the Non Executive Directors.

**29. Board of Directors – disqualification**

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

- 29.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 29.2** a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- 29.3** a person who has made a composition or arrangement with, or

granted a trust deed for, his/her creditors and has not been discharged in respect of it.

- 29.4** 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.

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out at Annex 6.

### **30. Board of Directors – meetings**

- 30.1** Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 30.2** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to members of the Council of Governors. As soon as practicable after holding a meeting subject to any legal requirement to the contrary, the Board of Directors must send a copy of the minutes of the meeting to members of the Council of Governors.

### **31. Board of Directors – standing orders**

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

### **32. Board of Directors - conflicts of interest of directors**

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

- 32.1.1** A duty to avoid a situation in which the Director has

(or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

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

**32.2** The duty referred to in paragraph 32.1.1 is not infringed if:

**32.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

**32.2.2** The matter has been authorised in accordance with the constitution.

**32.3** The duty referred to in paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

**32.4** In paragraph 32.1.2, “third party” means a person other than:

**32.4.1** The Trust; or

**32.4.2** A person acting on its behalf.

**32.5** If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors and the Trust Secretary who will record on the appropriate Register.

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

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

**32.8** This paragraph does not require a declaration of an interest of

which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

**32.9** A Director need not declare an interest:

- 32.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.9.2** If, or to the extent that, the Directors are already aware of it;
- 32.9.3** If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –
  - 32.9.3.1** By a meeting of the Board of Directors, or
  - 32.9.3.2** By a committee of the Directors appointed for the purpose under the constitution.

**33. Board of Directors – remuneration and terms of office**

- 33.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive Directors.
- 33.2** The Trust shall establish an executive remuneration committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive, other executive Directors and other senior managers not employed under the national terms and conditions of employment and pay.

**34. Registers**

The Trust shall have:

- 34.1** a register of members showing, in respect of each member, the

- constituency to which he/she belongs and, where there are classes within it, the class to which he belongs;
- 34.2** a register of members of the Council of Governors;
  - 34.3** a register of interests of governors;
  - 34.4** a register of Directors; and
  - 34.5** a register of interests of the Directors.

### **35. Admission to and removal from the registers**

The Trust Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

### **36. Registers – inspection and copies**

- 36.1** The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2** The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 36.3** So far as the registers are required to be made available:
  - 36.3.1** they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **37. Documents available for public inspection**

**37.1** The Trust shall make the following documents available on the Trust's website and available for inspection by members of the public free of charge at all reasonable times:

- 37.1.1** a copy of the current constitution;
- 37.1.2** a copy of the latest annual accounts and of any report of the auditor on them;
- 37.1.3** a copy of the latest annual report;
- 37.1.4** a copy of the report of any other external auditors of the Trust's affairs appointed by the Trust;
- 37.1.5** a copy of the clinical governance annual report
- 37.1.6** a copy of the latest information as to the Trust's forward planning;
- 37.1.7** a copy of the Trust's membership development strategy; and
- 37.1.8** a copy of the Trust's policy for the composition of the Council of Governors and the non-executive Directors.

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

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

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

- 37.2.3** a copy of any information published under section

65D (appointment of trust special administrator) of the 2006 Act.

**37.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

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

**37.2.6** a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

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

**37.2.8** a copy of any final report published under section 65I (administrator's final report),

**37.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

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

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

**37.4** 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.

### **38.Auditor**

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

### **39.Audit committee**

The Trust shall establish a committee of non-executive Directors as an audit committee. The audit committee will perform such monitoring, reviewing and other functions as are appropriate.

### **40.Accounts**

- 40.1** The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2** Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3** The accounts are to be audited by the Trust's auditor.
- 40.4** The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 40.5** The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

### **41.Annual report, forward plans and non-NHS work**

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

**41.2** The Annual Report shall provide:

**41.2.1** information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituencies and the classes of the staff constituency is representative of those eligible for such membership; and

**41.2.2** any other information Monitor requires.

**41.3** The Trust is to comply with any decision Monitor makes as to:

**41.3.1** the form of the report;

**41.3.2** when the report are to be sent to it;

**41.3.3** the periods to which the report relates.

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

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

**41.6** In preparing the document, the Directors shall have regard to the views of the Council of Governors.

**41.7** Each forward plan must include information about:

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

**41.7.2** the income it expects to receive from doing so.

**41.8** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 41.7.1 the Council of Governors must:

- 41.8.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions; and
  - 41.8.2** notify the Directors of the Trust of its determination.
- 41.9** If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

**42. Presentation of the annual accounts and reports to the governors and members**

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

  - 42.1.1** the annual accounts;
  - 42.1.2** any report of the auditor on them; and
  - 42.1.3** the annual report.
- 42.2** The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the Annual Members' Meeting.

**43. Instruments**

- 43.1** The Trust shall have a seal.

- 43.2** The seal shall not be affixed except under the authority of the Board of Directors.
- 43.3** A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

#### **44. Amendment of the constitution**

- 44.1** The Trust may make amendments of its constitution only if:
  - 44.1.1** More than half of the members of the Council of Governors of the Trust voting approve the amendments; and
  - 44.1.2** More than half of the members of the Board of Directors of the trust voting approve the amendments.
- 44.2** Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 44.3** Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
  - 44.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 44.3.2** The Trust must give the members an opportunity to vote on whether they approve the amendment.

If more than half of the members voting approve the amendment,

the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

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

#### **45. Mergers etc. and significant transactions**

- 45.1** The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

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

- 45.3** For the purposes of paragraph 45.2:

**45.3.1** A transaction is an investment or divestment and includes:

- Projects funded through private finance initiatives (PFI);
- Contracts to provide services;
- Material capital investments;
- Other mergers, acquisitions, investments or divestments; and
- Joint ventures.

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

**45.3.2.1** gross assets;

**45.3.2.2** income; or

**45.3.2.3** gross capital (following completion of the transaction),

calculated with reference to the Trust's opening balance sheet for the financial year in which approval is being sought.

- 45.4** For the avoidance of doubt, for the purposes of paragraph 45.3.1, the term 'transaction' shall not include a contract with a commissioning organisation for the provision of services for the purposes of the health service in England or Wales.
- 45.5** If more than half of the members of the Council of Governors voting decline to approve a significant transaction or any part of it, the Council of Governors must approve a written Statement of Reasons for its rejection, to be provided to the Board of Directors.
- 45.6** Noting in this paragraph shall prevent the Board of Directors from appropriate engagement with the Council of Governors, as it sees fit, to provide information on any other transaction or arrangement which the Trust may enter, which does not constitute a "significant transaction" as defined within paragraph 45.3.

## **ANNEX 1 – THE PUBLIC CONSTITUENCIES**

The following areas are public constituencies of the Trust:

- 1) **Bramhall and Cheadle** – which covers the following electoral wards: -  
Bramhall North, Bramhall South, Cheadle Hulme South, Cheadle and Gatley, Cheadle Hulme North and Heald Green
- 2) **Tame Valley and Werneth** – which covers the following electoral wards: -  
Brinnington and Central, Reddish North, Reddish South, Bredbury and Woodley, Bredbury Green and Romiley
- 3) **The Heatons and Victoria** – which covers the following electoral wards: -  
Heatons North, Heatons South, Davenport and Cale Green, Edgeley and Cheadle Heath, Manor
- 4) **Marple and Stepping Hill** – which covers the following electoral wards: -  
Marple North, Marple South, Hazel Grove, Offerton, Stepping Hill
- 5) **High Peak and Dales and Tameside and Glossop** – which covers the following electoral wards: -
  - (a) Those that fall within the Metropolitan Borough Council of Tameside
  - (b) The following electoral wards in High Peak: - Barms, Blackbrook, Burbage, Buxton Central, Chapel East, Chapel West, Corbar, Cote Heath, Hayfield, Limestone Peak, New Mills East, New Mills West, Sett, Stone Bench, Temple, Whaley Bridge, Dinting, Gamesley, Hadfield North, Hadfield South, Howard Town, Old Glossop, Padfield, Simmondley, St John's, Tintwistle, Whitfield.
- 6) **Outer Region** – which covers the electoral wards covered by the county / metropolitan councils / districts of:  
Derbyshire, Cheshire East, Cheshire West and Chester, Manchester, Trafford, Salford, Oldham, Rochdale, Bury, Bolton, Wigan and Tameside and those wards in High Peak not covered in the High Peak and Dales and Tameside and Glossop area, as defined above.

The minimum number of members of each of the public constituencies is four.

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

There are two staff classes:

- 1) Community staff; and
- 2) Other staff.

The minimum number of members of each class of the Staff Constituency is to be 16.

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

The Council of Governors of the Trust is to comprise:

1. twenty Public Governors, from the following public constituencies:
  - 1.1 Bramhall and Cheadle – four Public Governors;
  - 1.2 Tame Valley and Werneth – four Public Governors;
  - 1.3 the Heatons and Victoria – four Public Governors;
  - 1.4 Marple and Stepping Hill – four Public Governors;
  - 1.5 High Peak and Dales and Tameside and Glossop – three Public Governors (two representing High Peak and Dales and one representing Tameside and Glossop); and
  - 1.6 Outer region – one Public Governor.
2. four Staff Governors from the following classes:
  - 2.1 Community Staff – one Staff Governor; and
  - 2.2 Other Staff – three Staff Governors.
3. One Local Authority Governor to be appointed by Stockport Metropolitan Borough Council.
4. Two Governors appointed by Anchorpoint.
5. One Governor appointed by Stockport College of Education – one Partnership Governor.

## **ANNEX 4 –THE MODEL ELECTION RULES**

### **Stockport NHS Foundation Trust (Council of Governors) Model Election Rules**

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#### *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*

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9. Nomination of candidates
10. Candidate's consent and particulars
11. Subscription of nomination paper
12. Declaration of interests
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- 50. Sealing up of documents relating to the poll
- 51. Delivery of documents
- 52. Forwarding of documents received after close of the poll
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*Part 9 – Death of a candidate during a contested election*

- 55. Countermand or abandonment of poll on death of candidate

*Part 10 – Election expenses and publicity*

*Expenses*

- 56. Expenses incurred by candidates
- 57. Expenses incurred by other persons
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*Publicity*

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

*Part 11 – Questioning elections and irregularities*

62. Application to question an election

*Part 12 – Miscellaneous*

63. Secrecy
  64. Prohibition of disclosure of vote
  65. Disqualification
  66. Delay in postal services through industrial action or unforeseen event
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*Part 1 - Interpretation*

- 1. Interpretation** – (1) In these rules, unless the context otherwise requires –  
“corporation” means the public benefit corporation subject to this constitution;  
“election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;  
“Monitor” is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act; and  
“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.  
  
(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

*Part 2 – Timetable for election*

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

<b>Proceeding</b>		<b>Time</b>
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 65, 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 65, 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 corporation –** The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

*Part 4 - Stages Common to Contested and Uncontested Elections*

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Council of Governors to be elected from that constituency, or class with 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 final date that they must be delivered to the returning officer,
- (f) the contact details of the returning officer, and
- (g) the date of the close of the poll in the event of a contest.

**9. Nomination of candidates –** (1) Each candidate must be nominated on a separate nomination paper.

(2) The returning officer -

- (a) is to supply any member of the corporation with as many nomination papers as may be required, 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 names,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, which the candidate is a member of.

**11. Subscription of nomination paper –** (1) The nomination paper must be subscribed by at least [two] supporters.

(2) Each supporter must –

- (a) be a member of the same constituency, or class within a constituency, to which the candidate belongs, and

- (b) state his or her constituency, or class within a constituency, on the nomination paper.
- (3) A member of the corporation must not subscribe more than one nomination paper.
- (4) If a member of the corporation subscribes more than one nomination paper in contravention of paragraph (3), then the second and any further subscriptions received by the returning officer are invalid.
- (5) Where a member of the corporation subscribes a nomination paper, and the candidate nominated in the paper dies or withdraws before the paper is received by the returning officer, then nothing in paragraphs (3) or (4) prevents that member from subscribing the nomination paper of another candidate.

**12. 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.

**13. Declaration of eligibility** – (1) The nomination paper must include a declaration made by the candidate –

- (a) of the particulars of his or her qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and
- (b) that he or she is not prevented from being a member of the Council of Governors by provision 12.16 in the constitution.

(2) The declaration must be made by the candidate within 6 months of the close of the poll to be valid for the purposes of section 36(2) of the 2003 Act.

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

- (a) the candidate consents to being nominated in the paper,
- (b) the statement of the interests of the candidate in the paper, as required by rule 12, is true and correct, and
- (c) the declaration of eligibility required by rule 13 is true and correct.

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

- (a) the returning officer decides that the nomination paper is invalid,
- (b) proof is given to the returning officer's satisfaction that the candidate has died, or

- (c) the candidate withdraws.
- (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 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 is not subscribed as required by rule 11,
  - (d) that the paper does not contain a declaration of the interests of the candidate, as required by rule 12,
  - (e) that the paper does not include a declaration of eligibility as required by rule 13, or
  - (f) that the paper is not signed and dated by the candidate, as required by rule 14.
- (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 paper is invalid, he or she must endorse this on the paper, stating the reasons for the decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination paper is valid or invalid to the candidate, at the contact address given in the candidate's nomination paper.
- 16. Publication of statement of nominated candidates –** (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election as nominated.
- (2) The statement must show –
- (a) the name, contact address, and constituency or class within a constituency of each candidate standing as nominated, and
  - (b) the statement of interests of each candidate standing as nominated, as given in their nomination paper.
- (3) The statement must list the candidates standing for in alphabetical order.
- (4) If a candidate has been nominated by more than one nomination paper, the returning officer is to take the particulars required by this rule from one of the papers selected by the candidate, or by the returning officer in default of the candidate.
- (5) The returning officer must send a copy of the statement of nominated candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

**17. Inspection of statement of nominated candidates and nomination papers**  
– (1) The corporation is to make the statement of nominated candidates and the nomination papers supplied by the returning officer under rule 16(5) 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 statement of nominated candidates or the nomination papers, the corporation is to provide that person with the copy or extract free of charge.

**18. Withdrawal of candidates** - A candidate may withdraw from election on or before the final day for withdrawal by candidates, by giving the returning officer a notice of withdrawal which is signed by that candidate and attested by a witness.

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

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

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

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

#### *Part 5 – Contested elections*

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

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

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

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,

- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote,
  - (f) that the ballot paper is to be returned by post, with the address for its return and the date 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.
- 22. The declaration of identity –** (1) 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) 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 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 invalid.
- (5) The declaration of identity must be signed by the voter within six months of the close of the poll to be valid for the purposes of section 36(1) of the 2003 Act.

*Action to be taken before the poll*

**23. 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 do not come within rule 27 (the "list of eligible voters"), 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.

**24. Notice of poll** - The returning officer is to publish a notice of the poll stating—

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned by post,
- (f) the address for return of the ballot papers, and the date 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.

**25. 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,
- (b) a ballot paper envelope,
- (c) a declaration of identity,
- (d) information about each candidate standing for election, pursuant to rule 60 of these rules, and
- (e) 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.

**26. 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, and

- (b) the ballot paper envelope, with the ballot paper sealed inside it.

*The poll*

**27. Eligibility to vote –** An individual who becomes a member of the corporation—

- (a) on the final date for the delivery of notices of withdrawals by candidates from an election, or
- (b) on any subsequent day of the election,

is not eligible to vote in that election.

**28. 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.

**29. Spoilt ballot papers** (1) – If a voter has inadvertently dealt with his or her ballot paper in such a manner that it cannot be conveniently be used as a ballot paper (referred to as 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 attached to the original ballot paper has not been returned.

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

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

**30. 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 attached to the original ballot paper 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.

**31. Double voting and personation –** (1) If a person applies for a replacement ballot paper under rule 29 or 30 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 29(3) or 30(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 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.

**32. Declaration of identity for replacement ballot papers –** (1) 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 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 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 invalid.

(5) The declaration of identity must be signed by the voter within six months of the close of the poll to be valid for the purposes of section 36(1) of the 2003 Act.

*Procedure for receipt of envelopes*

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

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity, 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 34 and 35 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 34 and 35, 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.

**34. 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 returned before the close of the poll, with a declaration of identity 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 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 to 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.

**35. Declaration of identity but no ballot paper** – Where the returning officer receives a declaration of identity 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.

**36. Sealing of packets –** As soon as is possible after the completion of the procedure under rules 34 and 35, 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,
- (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*

**37. 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 44(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 42 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 43 below.

**38. 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.

**39. 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.

**40. 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).

**41. 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.

**42. 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 45 has been complied with.

**43. 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 44 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 44 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.

**44. 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 43 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 43 or 45 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 43 or 45 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.

#### **45. Exclusion of candidates – (1) If—**

- (a) all transferable papers which under the provisions of rule 43 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 46 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 44 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 46 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 43 and rule 44.

(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.

**46. 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.

**47. 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 43(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/she 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.

*Part 7 – Final proceedings in contested and uncontested elections*

**48. 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 Stockport NHS trust by section 4(4) of the 2003 Act, to the chairman of the NHS trust, or
    - (ii) in any other case, to the chairman of the corporation, and
  - (c) give public notice of the name of each candidate who he or she has declared elected.
- (2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 40(1),

available on request.

**49. 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*

**50. 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.

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

**52. 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.

**53. 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 Monitor, cause them to be destroyed.

(2) With the exception of the documents listed in rule 54(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.

**54. 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 Monitor.

(2) A person may apply to Monitor to inspect any of the documents listed in (1), and Monitor 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) Monitor'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, Monitor, 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 Monitor has declared that the vote was invalid.

*Part 9 – Death of a candidate during a contested election*

**55. 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) if the death is proved after the close of the poll, 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 50(1)(a).

*Part 10 – Election expenses and publicity*

*Election expenses*

**56. 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 Monitor under Part 11 of these rules.

**57 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.

**58. 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 59 and 60.

*Publicity*

**59. 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 60, 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.

**60. 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 25 of these rules.

(2) The candidate is invited to provide an election statement of no more than 150 words and a passport-sized photograph. Failure to do so will not invalidate the candidacy. Instead words ‘statement not received’ and/or ‘photograph not received’ will be published in the space which would have contained their election statement and/or photograph.

**61. 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*

**62. 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 Monitor.

(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 Monitor by -

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

(4) The application must –

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

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

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

*Part 12 – Miscellaneous*

**63. 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 voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate for whom any person has voted for on any particular ballot paper.

(2) No person may obtain or attempt to obtain information as to the candidate 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 that are affected by this provision are aware of the duties it imposes.

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

**65. 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.

**66. 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 25, 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 Monitor.

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

### **Elected Governors**

1. A member of a Public Constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Council of Governors that they are qualified to vote as a member of the relevant Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Appointed Governors**

2. The Trust Secretary, in consultation with the respective appointing organisation, is to adopt a process for agreeing the appointment of each of the Appointed Governors.

### **Lead Governor**

3. The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors. The Lead Governor may be a Public Governor, an Appointed Governor or a Staff Governor.
4. The term of office of the Lead Governor shall be 12 months.

### **Further provisions as to eligibility to be a Governor**

7. A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
  - 7.1. He/she is an Executive Director of the Trust or a Governor or Director of another NHS foundation trust or any other NHS body, unless such NHS foundation trust or NHS body is an appointing organisation which is appointing them under this constitution;

- 7.2. He/she is a member of a committee which has, any role on behalf of a local authority to scrutinise and review health matters, for example, an Overview and Scrutiny Committee;
- 7.3. He/she has previously been removed as a Governor pursuant to the procedure set out in this Annex 5;
- 7.4. Being a member of one of the public constituencies, he/she has failed to sign a declaration in the form specified by the Council of Governors 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;
- 7.5. He/she is subject to a sex offender order;
- 7.6. He/she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 7.7. He/she is a person whose tenure of office as the Chairman or as a member or Director of a health service body has been terminated on the grounds that his/her appointment is not in the interests of the health service, for non-attendance at meetings without good reason or for non-disclosure of a pecuniary interest;
- 7.8. On the basis of disclosures obtained through an application to the Disclosure and Barring Service, he/she is not considered suitable to become or continue as a Governor following consideration by the Trust's Chairman, Chief Executive and Lead Governor;
- 7.9. He/she has had his/her name removed from any list maintained pursuant to the NHS (Performers Lists) (England) Regulations 2013 or the equivalent lists maintained in Wales and he/she has not subsequently had his/her name included in such a list.

## **Termination of office and removal of Governors**

- 8 A person holding office as a Governor shall immediately cease to do so if:
  - 8.1. He/she resigns by notice to the Trust Secretary;
  - 8.2. He/she fails to attend two formal meetings of the Council of Governors in any Governor Year unless the other Governors are satisfied that:
    - 8.2.1. The absences were due to reasonable causes; and
    - 8.2.2. He/she will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
- For the purposes of this paragraph, a "Governor Year" runs from one Annual Members' Meeting until the next.
- 8.3. He/she has failed without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
- 8.4. He/she has failed to sign and deliver a statement to the Trust Secretary in a form required by the Trust confirming acceptance and agreement to abide by the Trust's statement of roles and responsibilities in relation to the Council of Governors, the Trust's Code of Conduct for Governors and the Trust's Stewardship Standards for Governors;
- 8.5. He/she is removed from the Council of Governors under the following provisions.

9 A Governor may be removed from the Council of Governors by a resolution approved by two thirds of the remaining Governors present and voting at a General Meeting on the grounds that:

- 9.1. He/she committed a serious breach of the code of conduct; or
- 9.2. He/she has acted in a manner deemed to be detrimental to the interests of the Trust,

and the Council of Governors considers that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

### **Vacancies amongst Governors**

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

11 Where the vacancy arises amongst the appointed Governors, the Trust Secretary shall request that the appointing organisation nominates a replacement to hold office for the remainder of the term of office.

12 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:

12.1. To call an election within three months to fill the seat for the remainder of that term of office; or

12.2. To invite the next highest polling candidate for that seat at the most recent election to fill the seat until the next election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office. Should that candidate decline, the Council of Governors shall be at liberty to approach each of the remaining next highest polling candidates in order until the seat is filled, failing which the options referred to in paragraphs 10.1 and 10.3 of this Annex 5 shall be available to the Council of Governors; or

- 12.3. If the unexpired period of the term of office is less than six months, to leave the seat vacant until the next elections are held.
- 13 For the purposes of eligibility to seek re-election or to be re-appointed as a Governor under this constitution, the period between a Governor's election or appointment as a Governor pursuant to these provisions to fill a vacancy on the Council of Governors and the conclusion of the next annual members meeting shall be treated as one year.

## **ANNEX 6 – ADDITIONAL PROVISIONS – BOARD OF DIRECTORS**

### **Appointment of Chairman and other non-executive Directors**

The Chairman and the non-executive Directors are to be appointed by the Council of Governors in accordance with paragraph 26 of the constitution using the following procedure.

1. The Council of Governors taking into account recommendations from the Nominations Committee will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
2. The Board of Directors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive Directors.
3. Appropriate candidates will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.
4. The Nominations Committee will comprise the Chairman (or, when a Chair is being appointed, the Deputy Chair unless they are standing for appointment, in which case another non-executive Director), Deputy Chairman, five Governors and the Chief Executive. The Chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee.
5. The Nominations Committee will make a recommendation to the Council of Governors for approval.
6. Any re-appointment of a non-executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors has approved.

## **Removal of Chairman and other non-executive Directors**

The Chairman or another non-executive Director may be removed by the Council of Governors in accordance with paragraph 26 of the constitution, subject to the following procedure.

7. Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors.
8. Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.
9. In making any decision to remove a non-executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman.
10. If any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

## **Further provisions as to eligibility to be a Director**

11. A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if:
  - 11.1 He/she is a member of a committee which has, any role on behalf of a local authority to scrutinise and review health matters, for example, an Overview and Scrutiny Committee;
  - 11.2 He/she is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

- 11.3 He/she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 11.4 He/she is a person whose tenure of office as the Chairman or as a member or Director of a health service body has been terminated on the grounds that his/her appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 11.5 He/she has had his/her name removed from any list maintained pursuant to the NHS (Performers Lists) (England) Regulations 2013 or the equivalent lists maintained in Wales and he/she has not subsequently had his/her name included in such a list.
- 11.6 In the case of a non-executive Director they have failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 11.7 He/she has failed to sign and deliver to the Trust Secretary a statement in the form requirement by the Board of Directors confirming acceptance of the code of conduct for Directors.

### **Remuneration, allowances and expenses**

12. The remuneration and allowances for Directors are to be disclosed in the annual report.
13. The Trust may reimburse Directors for travelling and other costs and expenses at such rates as the executive remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.

### **Trust Secretary**

14. The Trust shall have a Trust Secretary who may be an employee. The Trust Secretary may not be a Governor, the Chief Executive or the Finance

Director.

15. The Trust Secretary's functions shall include:
  - 15.1 acting as Secretary to the Council of Governors, the Board of Directors and any committees of the Council and the Board respectively;
  - 15.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors and keeping the minutes of those meetings;
  - 15.3 keeping the register of members and other registers and books required by this constitution to be kept;
  - 15.4 having charge of the Trust's seal;
  - 15.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
  - 15.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made.

16. The Trust Secretary is to be appointed and removed by the Trust Chairman and Chief Executive.

### **Charitable Funds**

17. The Board of Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.

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

**1. INTERPRETATION**

- 1.1 Save as permitted by law, the Chair of the Foundation Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Trust Secretary).
- 1.2 If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
- 1.3 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

**“Board of Directors”** shall mean the Chair and Non-Executive Directors and the Executive Directors.  
(As detailed in para 23.2 of the Constitution)

**“Chair”** is the person appointed as Chairman by the Council of Governors in accordance with this Constitution. The expression “the Chair” shall be deemed to include the Deputy Chairman or otherwise a Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.

**“Chief Executive”** shall mean the chief officer of the Trust.

**“Constitution”** means the constitution of the Trust and all annexes to it, as may be amended from time to time.

**“Council of Governors”** means the Council of Governors of the Trust;

**“Director”** shall mean a person appointed to the

	Board of Directors in accordance with the Trust's Constitution and includes the Chair.
<b>"Governor"</b>	means a Governor of the Council of Governors
<b>"Meeting"</b>	means a duly convened meeting of the Council of Governors;
<b>"Motion"</b>	Means a formal proposition to be discussed and voted on during the course of a meeting.
<b>"Nominated Officer"</b>	means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.
<b>"Officer"</b>	means an employee of the Trust.
<b>"Question on Notice"</b>	means a question from a Governor (notice of which has been given pursuant to Standing Order 4.7.2) about a matter over which the Council has powers or duties or which affects the services provided by the Trust;
<b>"SOS"</b>	means Standing Orders.
<b>"Trust Secretary"</b>	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint assistant or deputy secretary.

## 2. GENERAL INFORMATION

- 2.1 These Standing Orders for the practice and procedure of the Council of Governors are the standing orders referred to in paragraph 18 of

the Constitution. They may be amended in accordance with the procedure set out in Standing Order 4.14 below.

- 2.2 The purpose of the Council of Governors' Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all meetings of the Council of Governors and associated deliberations. The Council shall at all times seek to comply with the Trust's statement of roles and responsibilities in relation to the Council of Governors, the Trust's Code of Conduct for Governors and the Trust's Stewardship Standards for Governors.
- 2.3 All business shall be conducted in the name of the Trust.
- 2.4 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Governor save where the Governor has acted recklessly. Any costs arising in this way will be met by the Trust. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity as appropriate.

### **3. Composition of the Council of Governors**

- 3.1. The composition of the Council of Governors shall be in accordance with paragraph 12 and Annex 3 of the Constitution.
- 3.2. **Appointment and Removal of the Chair and Deputy Chair of the Council of Governors** - These appointments shall be made by the Council of Governors in accordance with paragraphs 26 and 27 of the Constitution.
- 3.3. **Duties of Deputy Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chair owing to illness, or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair or the Non-Executive Director nominated by the Council of Governors to take on the duties of the Chair or Deputy Chair should both be absent from a meeting or otherwise unavailable or unable to perform his/her duties. If the person presiding at any meeting of the Council of Governors has a conflict

of interest in relation to the business being discussed, the Lead Governor appointed by the Council of Governors will chair that part of the meeting.

#### **4. Meetings of the Council of Governors**

##### **4.1. Admission to meetings**

- 4.1.1 Meetings of the Council of Governors must be open to the public (which, for the avoidance of doubt, includes representatives of the press), subject to 4.1.2 and 4.1.3 below.
- 4.1.2 The Council of Governors may resolve to exclude members of the public or a representative from the press from any meeting or part of a meeting for reasons of commercial confidentiality or for other special reasons.
- 4.1.3 The Chair may exclude any member of the public or representative from the press from the meeting of the Council of Governors if he/she considers that that member of the public or representative from the press is interfering with or preventing the proper conduct of the meeting or for other special reasons.
- 4.1.4 Meetings of the Council of Governors shall be held at least four times each financial year at such times and places that the Chair may determine in consultation with the Trust Secretary and Lead Governor.
- 4.1.5 Without prejudice to the power of the Council of Governors to require one or more of the Directors to attend a meeting of the Council of Governors for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and decide whether to propose a vote on the Trust's or Directors' performance) at paragraph 17.3 of the Constitution, the Council of Governors may invite the Chief Executive, one or more Directors or a representative of the auditor or other advisors , as appropriate, to attend any meeting of the Council of Governors to enable Governors to raise questions about the Trust's affairs.

##### **4.2 Calling Meetings**

- 4.2.1 Meetings of the Council of Governors may be called by the Trust Secretary or the Chair or seven Governors (including at least two elected Governors and one appointed Governor)

who give written notice to the Trust Secretary specifying the business to be carried out. The Trust Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Trust Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If upon receipt of such a request, the Trust Secretary fails to call such a meeting, the Chair or seven Governors, whichever is the case, shall call the meeting.

- 4.2.2 All decisions taken in good faith at a meeting of the Council of Governors or of any committee of the Council of Governors shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting or the appointment or election of the Governors attending the meeting.

#### 4.3 **Notice of Meetings**

- 4.3.1 The Trust Secretary shall deliver a schedule of the dates, times and venues of meetings of the Council of Governors for each financial year, six months in advance of the first meeting of the Council of Governors to be called, duly agreed by the Chair or by an Officer of the Trust authorised by the Chair to sign on his/her behalf, to every Governor, or send such schedule by post to such Governor. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to 4.3.4 below.
- 4.3.2 Notwithstanding 4.3.1, and subject to 4.3.3, should an additional meeting of the Council of Governors be called pursuant to 4.2, the Trust Secretary shall, as soon as possible, deliver written notice of the date, time and venue of the meeting to every Governor, or send notice to such Governor, so as to be available to him at least fourteen days but not more than twenty-eight days' notice before the meeting. Such notice will also be published on the Trust's website.
- 4.3.3 The Chair may waive the notice required pursuant to 4.3.2 in the case of emergencies or in the case of the need to conduct urgent business.

- 4.3.4 Subject to 4.3.3, failure to serve notice on more than three quarters of Council of Governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.
- 4.3.5 Before each meeting of the Council of Governors, the Trust Secretary shall ensure that every Governor is provided with reasonable notice of the details of the business to be transacted in it. In the case of a meeting called by Governors pursuant to paragraph 4.2.1, no business shall be transacted at the meeting other than that specified in the notice.

#### **4.4 Setting the Agenda**

- 4.4.1 The Trust Secretary shall ensure an agenda, minutes of the previous meeting of the Council of Governors, copies of any Questions on Notice and/or motions on notice to be considered at the relevant meeting of the Council of Governors and any supporting papers are delivered to every Governor, or sent electronically to such Governor, so as to be available to him/her normally at least seven days in advance of the meeting.
- 4.4.2 Approval of the minutes of the previous meeting of the Council of Governors will be a specific item on each agenda.
- 4.4.3 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4.4 Without prejudice to the Chair's discretion to allow urgent motions or urgent questions, there will no agenda item entitled "Any Other Business." Instead, there will be an item for Questions on Notice and/or motions on notice which are subject to other provisions of these standing orders.

#### **4.5 Chair of Meeting**

At any meeting of the Council of Governors, the person presiding shall be determined in accordance with paragraph 17.1 of the Constitution.

#### **4.6 Notices of Motions**

- 4.6.1 For the avoidance of doubt, motions by the Council of Governors may only concern matters for which the Council of Governors has a responsibility or which affect the services provided by the Trust.
- 4.6.2 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governor who gave it and the signature of seven other Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any Governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he/she considers it appropriate.
- 4.6.3 Subject to 4.6.5 and except in the circumstances covered by 4.8, Governors desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting at which it is proposed to be considered to the Trust Secretary, such written notice to be signed or transmitted by at least two Governors. For the purposes of this 4.6, receipt of such motions by electronic means is acceptable.
- 4.6.4 Upon receipt of a motion, the Trust Secretary shall:
  - 4.6.4.1 acknowledge receipt to each of the Governors who signed or transmitted it; and
  - 4.6.4.2 insert this in the agenda for that meeting, together with any relevant papers.
- 4.6.5 The following motions may be moved at any meeting without notice:
  - 4.6.5.1 To amend the minutes of the previous meeting of the Council of Governors in order to ensure accuracy;
  - 4.6.5.2 To change the order of business in the agenda for the meeting;
  - 4.6.5.3 To refer a matter discussed at a meeting to an

appropriate body or individual;

4.6.5.4 To appoint a working group arising from an item on the agenda for the meeting;

4.6.5.5 To receive reports or adopt recommendations made by the Board of Directors;

4.6.5.6 To withdraw a motion;

4.6.5.7 To amend a motion;

4.6.5.8 To proceed to the next business on the agenda;

4.6.5.9 That the question be now put;

4.6.5.10 To adjourn a debate;

4.6.5.11 To adjourn a meeting;

4.6.5.12 To exclude the public and press from the meeting in question pursuant to 4.1.2 (in which case, the motion shall state on what grounds such exclusion is appropriate).

4.6.5.13 To not hear further from a Governor, or to exclude them from the meeting in question (if a member persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in his/her absolute discretion, may move that the Governor in question will not be heard further at that meeting and, if seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly and in breach of the Governors' Code of Conduct after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specific period. If seconded, that motion will be voted on without discussion.)

4.6.5.14 To give the consent of the Council of Governors to any matter on which its consent is required pursuant to the Constitution.

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

#### **4.7 Questions on Notice at Meetings**

- 4.7.1 Subject to 4.7.2, a Governor may ask a Question on Notice of:
  - 4.7.1.1 the Chair;
  - 4.7.1.2 another Governor;
  - 4.7.1.3 an Executive Director; or
  - 4.7.1.4 the chair of any sub-committee or working group of the Council.
- 4.7.2 Except in the circumstances covered by 4.8, notice of a Question on Notice must be given in writing to the Trust Secretary at least ten days prior to the relevant meeting. For the purposes of this Standing Order 4.7, receipt of any such Questions on Notice via electronic means is acceptable.
- 4.7.3 A response to a Question on Notice may take the form of:
  - 4.7.3.1 A direct oral answer at the relevant meeting (which may, where the desired information is in a publication of the Trust or other published work, take the form of a reference to that publication);
  - 4.7.3.2 Where a direct oral answer cannot be given, a written answer which will be circulated as soon as reasonably practicable to the questioner and circulated to the remaining Governors with the agenda for the next meeting.
- 4.7.4 Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Chair.

#### **4.8 Urgent motions or questions**

- 4.8.1 The Chair may, in his/her opinion, table an urgent motion or question.
- 4.8.2 A Governor may submit an urgent motion or question in writing to the Trust Secretary before the commencement of the meeting at which it is proposed it should be considered.

#### **4.9 Reports from the Executive Directors**

- 4.9.1 At any meeting, a Governor may ask any question on any report by an Executive Director or another Officer through the Chair without notice, after that report has been received by or while such report is under consideration by the Council of Governors at the meeting.

- 4.9.2 Unless the Chair decides otherwise, no statements will be made by a Governor other than those which are strictly necessary to define or clarify any questions posed pursuant to 4.9.1 and, in any event, no such statement may last longer than three minutes each.
  - 4.9.3 A Governor who has asked a question pursuant to 4.9.1 may ask a supplementary question if the supplementary question arises directly out of the reply given to the initial question.
  - 4.9.4 The Chair may, in his/her absolute discretion, reject any question from any Governor if, in the opinion of the Chair, the question is substantially the same and relates to the same topic as a question which has already been put to the meeting or a previous meeting.
  - 4.9.5 At the absolute discretion of the Chair, questions may, at any meeting which is held in public, be asked of the Executive Directors present by members of the Foundation Trust or any other members of the public present at the meeting.
- 4.10 **Speaking**
- This Standing Order applies to all forms of speech/debate by Governors or members of the Trust and public in relation to a motion or question under discussion at a meeting of the Council of Governors.
- 4.10.1 Any approval to speak must be given by the Chair.
  - 4.10.2 Verbal contributions must be directed to the matter, motion or question under discussion or to a point of order.
  - 4.10.3 Unless in the opinion of the Chair it would not be desirable or appropriate to time limit verbal contributions on any topic to be discussed having regard to its nature, complexity or importance, no proposal, verbal contributions nor any reply may exceed three minutes.
  - 4.10.4 The Chair may, in his/her absolute discretion, limit the number of replies, questions or verbal contributions which are heard at any one meeting.
  - 4.10.5 A person who has already spoken on a matter at a meeting may not speak again at that same meeting in respect of that matter unless exercising a right of reply or speaking on a point of order.

#### **4.11 Chair's Ruling**

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

#### **4.12 Voting**

- 4.12.1 Subject to the provisions of this Constitution, decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.12.2 All decisions put to the vote shall, at the discretion of the Chair 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 or if the Chair so directs.
- 4.12.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.12.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.12.5 In no circumstances may an absent Governor vote by proxy. Subject to paragraph 4.17.3, absence is defined as being absent at the time of the vote.
- 4.12.6 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 Council of Governors of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a Governor on 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 shall draw this to the attention of the elected Governors.

**4.13 Suspension of Standing Orders (SOs)**

- 4.13.1 Except where this would contravene any statutory provision or a direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present and that a majority of those present vote in favour of suspension.
- 4.13.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.13.3 No formal business may be transacted while SOs are suspended.
- 4.13.4 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
- 4.13.5 The Trust's Audit Committee shall review every decision to suspend SOs.

**4.14 Variation and Amendment of Standing Orders**

These Standing Orders shall be amended only in accordance with the procedure set out in paragraph **Error! Reference source not found.** of the Constitution and only if:

- 4.14.1 the variation proposed does not contravene a statutory provision;
- 4.14.2 a motion to amend the Standing Orders is signed by seven Governors and submitted to the Trust Secretary in writing at least 21 days before the meeting at which the motion is intended to be proposed; and
- 4.14.3 no fewer than three quarters of the Governors present and voting vote in favour of the amendment.

**4.15 Record of Attendance**

- 4.15.1 The names of the Governors present at the meeting (including when present pursuant to paragraph 4.17.3) shall be recorded in the minutes.
- 4.15.2 Governors who are unable to attend a meeting shall notify the Trust Secretary in writing in advance of the meeting in question in order that their apologies are submitted.

**4.16 Minutes**

- 4.16.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted

for agreement at the next meeting where they will be signed by the person presiding at it.

- 4.16.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.16.3 The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public and press are excluded pursuant to 4.1.2 unless otherwise required by law.

**4.17 Quorum**

- 4.17.1 Ten Governors shall form a quorum.
- 4.17.2 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 4.17.3 Governors are expected to attend meetings in person but on occasions the Council of Governors may agree that its members can make a request to the Trust Secretary to participate in its meetings by telephone, video or video media link and where appropriate, address communication and language needs. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

**5. Arrangements for the Exercise of Functions by Delegation**

The Council of Governors may not delegate any of its powers to a committee or sub-committee, although it may appoint committees consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Trust Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

## **6. Confidentiality**

- 6.1 A Governor on the Council of Governors or any of its Committees shall not disclose a matter dealt with by, or brought before, the Council of Governors or any of its Committees without its permission.
- 6.2 Members of the Nominations Committee shall not disclose any matter dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or the Committee resolves that it is confidential.

## **7. Declaration of Interests and Register of Interests**

- 7.1 Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests to the Council in accordance with paragraph 20 of the Constitution and any other material interest as defined below. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.2 Subject to the exceptions in 7.3, a "material interest" is:
  - 7.2.1 any directorship of a company;
  - 7.2.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Trust;
  - 7.2.3 any interest in an organisation providing health and social care services to the National Health Service;
  - 7.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 7.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 7.3 The exceptions which shall not be treated as material interests for the purposes of these provisions are as follows:
  - 7.3.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 7.3.2 an employment contract with the Trust held by a Staff Governor;

- 7.3.3 an employment contract with a local authority held by a Local Authority Governor;
  - 7.3.4 an employment contract with or other position of authority within an appointing organisation held by an Appointed Governor.
- 7.4 Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his/her spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:
  - 7.4.1 shall withdraw from the meeting (unless the Council of Governors grants permission for the Governor to remain);
  - 7.4.2 play no part in the relevant discussion or decision; and
  - 7.4.3 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 7.5 Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions will breach their Code of Conduct and must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 7.6 If a Governor has any doubt about the relevance of an interest, he/she should discuss it with the Chair or Trust Secretary who shall advise him whether or not to disclose the interest.
- 7.7 At the time a Governor's interests are declared, they should be recorded in the Council of Governors' minutes and entered on a Register of Interests of Governors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next meeting of the Council of Governors following the change occurring.
- 7.8 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

## **8. Register of Interests**

- 8.1 The Trust Secretary, will ensure that a Register of Interests is established to record formally declarations of interests of Governors.
- 8.2 Details of the Register will be kept up to date and reviewed annually.
- 8.3 The Register will be available to the public.

## **9. Compliance - Other Matters**

- 9.1 All Governors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.3 All Governors must behave in accordance with the Trust's Statement of roles and responsibilities, Code of Conduct for Governors and Stewardship Standards as amended from time to time including the seven Nolan principles of behaviour in Public Life: -
  - Selflessness;
  - Integrity;
  - Objectivity;
  - Accountability;
  - Openness;
  - Honesty, and
  - Leadership.

## **10. Resolution of Disputes with Board of Directors**

- 10.1 Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below shall be followed.
- 10.2 The Chair, or Deputy Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 10.3 Failing resolution under 9.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

- 10.4 The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.5 The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.
- 10.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he/she shall advise the Council of Governors and Board of Directors accordingly.
- 10.7 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

## **11. Council Performance**

- 11.1 The Chair shall, every three years, lead a performance assessment process for the Council of Governors to enable the Council of Governors to review its roles, structure and composition, and procedures, taking into account emerging best practice.

11.2 The performance assessment process in 10.1 shall include a review of the input into the Council of Governors of each appointing organisation.

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

**1. Interpretation**

- 1.1. Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Trust Secretary).
- 1.2. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
- 1.3. Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"BOARD OF DIRECTORS" shall mean the Chair and Non-Executive Directors and the Executive Directors.

"CHAIR" is the person appointed as Chairman by the Council of Governors in accordance with this Constitution. The expression "the Chair" shall be deemed to include the Deputy Chair or otherwise a Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.

"CHIEF EXECUTIVE" shall mean the chief officer of the Foundation Trust.

"COMMITTEE" shall mean a committee appointed by the Board of Directors.

"COMMITTEE MEMBERS" shall be persons formally appointed by the Board of Directors to sit on or to chair specific committees.

"Constitution" shall mean the constitution of the Trust and all annexes to it, as may be amended from time to time.

"DIRECTOR" shall mean a member of the Board of Directors appointed in accordance with the Trust's Constitution and includes the Chair.

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

"NOMINATED OFFICER" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

"OFFICER" means an employee of the Trust.

"SOs" mean Standing Orders.

"Trust Secretary" means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint assistant or deputy secretary.

## **2. General Information**

- 2.1. The purpose of the Board of Directors Standing Orders is to ensure that the highest standards of Corporate Governance are achieved in the Board of Directors and throughout the organisation. The Board of Directors shall at all times seek to comply with the Trust's Code of Conduct for Directors.
- 2.2. All business shall be conducted in the name of the Trust.
- 2.3. The Trust as Corporate Trustee shall administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4. A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Director save where

the Director has acted recklessly. Any costs arising in this way will be met by the Trust. On behalf of the Directors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

### **3. Composition of the Board of Directors**

- 3.1. The composition of the Board of Directors shall be as set out in paragraph 23 of the Trust's Constitution.
- 3.2. **Appointment and Removal of the Chair and Non-Executive Directors** - The Chair and Non-Executive Directors are appointed/removed by the Council of Governors in accordance with paragraph 26 of the Trust's Constitution.
- 3.3. **Appointment and Removal of the Executive Directors** – The Chief Executive and the other Executive Directors shall be appointed in accordance with paragraph 28 of the Trust's Constitution.
- 3.4. **Appointment and Removal of Deputy Chair** – For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, a Deputy Chair shall be appointed in accordance with paragraph 27 of the Trust's Constitution.
- 3.5. **Powers of Deputy Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chair owing to illness, absence from England or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair or otherwise to the Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.
- 3.6. **Joint Directors** - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an Executive Director is to be appointed, those

persons shall become appointed as an Executive Director jointly, and shall count as one person.

- 3.7. Non-Executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of Non-Executive Directors.

#### **4. Meetings of the Board of Directors**

##### **4.1. Admission to meetings**

4.1.1. Meetings of the Board of Directors must be open to the public, unless the Board in its absolute discretion decides otherwise in relation to all or part of such meetings for reasons of commercial sensitivity or for other special reasons.

4.1.2. The Board of Directors may resolve to invite an individual to any meeting or part of a meeting on the grounds that it considers that:

(a) their attendance at the meeting is relevant and beneficial to the nature of the business under consideration or is otherwise in the public interest; and

(b) that the individual understands any requirements for confidentiality that may be required of them by attending that meeting or part of a meeting.

4.1.3. Meetings of the Board of Directors shall be held at least eight times each year at times and places that the Board of Directors may determine.

#### **4.2. Calling Meetings**

- 4.2.1. Meetings of the Board of Directors may be called by the Trust Secretary, or by the Trust Secretary on the request of the Chair or by four Directors who give written notice to the Trust Secretary specifying the business to be carried out. The Trust Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Trust Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Trust Secretary fails to call such a meeting, the Chair or four Directors, whichever is the case, shall call the meeting.
- 4.2.2. All decisions taken in good faith at a meeting of the Board of Directors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, a vacancy on the Board of Directors, or defect in the appointment of the Directors attending the meeting.

#### **4.3. Notice of Meetings**

- 4.3.1. The Trust Secretary shall deliver a schedule giving notice of the date, time and venue of all meetings of the Board of Directors planned for the next calendar year, signed by the Chair or by an Officer of the Trust authorised by the Chair to sign on his/her behalf to every Director so as to be available to him at least fourteen days before the first meeting and, in any event, before 1 January of the next calendar year. Lack of service of the notice on any Director shall not affect the validity of a meeting, subject to 4.3.4 below.
- 4.3.2. Notwithstanding the above requirement for a schedule of meeting dates each calendar year, and subject to 4.3.3, should an additional meeting of the Board of Directors be called pursuant to 4.2, the Trust Secretary shall, as soon as possible, deliver written notice of the date, time and venue

of the meeting to every Director so as to be available to him at least fourteen days before the meeting and not more than twenty eight days before the meeting.

- 4.3.3. The Chair may waive the notice required pursuant to 4.3.2 in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.4. Subject to 4.3.3, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.
- 4.3.5. Before each meeting of the Board, the Trust Secretary shall ensure that every Director is provided with reasonable notice of the details of the business proposed to be transacted at it. In the case of a meeting called by Directors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

#### **4.4. Setting the Agenda**

- 4.4.1. The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted.
- 4.4.2. In the case of a meeting called by the Chair or Trust Secretary, a Director desiring a matter to be included on an agenda shall make his/her request in writing to the Trust Secretary at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4.3. The Trust Secretary shall make arrangements to ensure that the final agenda and any supporting papers for the meeting,

following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least seven clear days before the meeting. Copies of the final agenda must be sent to the Council of Governors at the same time.

#### **4.5. Chair of Meeting**

At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair appointed by the Council of Governors to take on the Chair's duties shall preside. Otherwise, such Non-Executive Director as the Directors present shall choose shall preside.

#### **4.6. Notices of Motions**

4.6.1. A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Trust Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to 4.3.5 above.

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

4.6.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors it shall not be competent for any Director, other than the Chair, to propose

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

- 4.6.4. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5. When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
  - (a) An amendment to the motion.
  - (b) The adjournment of the discussion or the meeting.
  - (c) The appointment of an ad hoc committee to deal with a specific item of business.
  - (d) That the meeting proceeds to the next business.
  - (e) That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

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

#### **4.7. Chair's Ruling**

Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

#### **4.8. Voting**

- 4.8.1. Subject to the provisions of this Constitution, decisions at meetings shall be determined by a majority of the votes of the Directors present and voting. In the case of any equality of votes, the Chair, or, in his/her absence, the person appointed to preside in accordance with 4.5 shall have a second and casting vote. No resolution of the Board of Directors shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.
- 4.8.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request or if the Chair so directs.
- 4.8.3. If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.8.4. If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.5. In no circumstances may an absent Director vote by proxy. Subject to paragraph 4.14.4, absence is defined as being absent at the time of the vote.
- 4.8.6. An officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An

Officer's status when attending a meeting shall be recorded in the minutes.

#### **4.9. Joint Directors**

Where an Executive Director post is shared by more than one person:

- (a) each person shall be entitled to attend meetings of the Board of Directors;
- (b) in the case of agreement between them, they shall be eligible to have one vote between them;
- (c) in the case of disagreement between them, no vote should be cast;
- (d) the presence of those persons shall count as one person.

#### **4.10. Suspension of Standing Orders (SOs)**

4.10.1. Except where this would contravene any statutory provision or direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including two Executive Directors and two Non-Executive Directors, and that a majority of those present vote in favour of suspension.

4.10.2. A decision to suspend SOs shall be recorded in the minutes of the meeting.

4.10.3. A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.

4.10.4. No formal business may be transacted while SOs are suspended.

4.10.5. The Audit Committee shall review every decision to suspend SOs.

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

These Standing Orders shall be amended only in accordance with paragraph 4.10 and only if:

- 4.11.1. the variation proposed does not contravene a statutory provision;
- 4.11.2. at least two thirds of the Directors are present; and
- 4.11.3. no fewer than half the total number of Non Executive Directors vote in favour of the amendment.

#### **4.12. Record of Attendance**

The names of the Directors present at the meeting (including when deemed present pursuant to paragraph 4.14.4) shall be recorded in the minutes.

#### **4.13. Minutes**

4.13.1. The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.13.3. Approved minutes shall be sent to the Council of Governors as soon as practicable after each meeting of the Board and shall be otherwise circulated in accordance with the Directors' wishes.

#### **4.14. Quorum**

- 4.14.1. No business shall be transacted at a meeting of the Board of Directors unless at least six Directors (each of which, for the avoidance of doubt, are entitled to vote) including not less than two Executive Directors (one of whom must be the Chief Executive or another Executive Director nominated by the Chief Executive), and not less than two Non-Executive Directors (one of whom must be the Chair or the Deputy Chair of the Board of Directors) are present.
- 4.14.2. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 4.14.3. If a Director has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 4.14.4. The Board of Directors may agree that its members can participate in its meetings by telephone, video or video media link and where appropriate, address communication and language needs. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting. (See also 4.8.5)

### **5. Arrangements for the Exercise of Functions by Delegation**

- 5.1. The Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, or by a Director or an Officer of the Trust in each case

subject to such restrictions and conditions as the Board of Directors thinks fit.

- 5.2. **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.
- 5.3. **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.
- 5.4. **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to one of its Committees shall be exercised on behalf of the Board of Directors by the Chief Executive. He/she shall determine which functions he/she will perform personally and shall nominate Officers to undertake remaining functions but still retain an accountability for these to the Board of Directors.
- 5.5. The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals that shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 5.6. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Executive Directors to provide information and advise the Board of Directors in accordance with any statutory requirements.

5.7. The arrangements made by the Board of Directors as set out in the "Scheme of Delegation" shall have effect as if incorporated into these Standing Orders.

## 6. Committees

### 6.1. Appointment of Committees

6.1.1. The Board of Directors may appoint committees of the Board of Directors, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.

6.1.2. A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the committee (whether or not they include Directors of the Trust).

6.1.3. The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board of Directors.

6.1.4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors) as the Board of Directors shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall be read in conjunction with these Standing Orders.

6.1.5. The Board of Directors may not delegate their executive powers to a committee, and a committee may not delegate any executive power it may have to a sub-committee, unless the committee or subcommittee consists wholly of Directors and such delegation is expressly authorised by the Board of Directors.

- 6.1.6. The Board of Directors shall approve the appointments to each of the committees that it has formally constituted. Where the Board of Directors determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors.
- 6.1.7. Where the Trust is required to appoint persons to a committee, which is to operate independently of the Trust, such appointment shall be approved by the Board of Directors.

## 6.2. **Confidentiality**

- 6.2.1. In accordance with the Code of Conduct, a member of the Board of Directors shall not disclose a matter dealt with by, or brought before, the Board of Directors without its permission.
- 6.2.2. A member of a committee of the Board of Directors shall not disclose any matter dealt with by, or brought before, the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

## 7. **Declaration of Interests and Register of Interests**

### 7.1. Declaration of Interests

- 7.1.1. Directors are required to comply with the Trust's Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Board of Directors. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

7.1.2. Interests regarded as " material" include any of the following, held by a Director, or the spouse or partner of a Director or family member:

- a) Any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust.
- b) Any directorship of a company.
- c) Any interest in a voluntary or other organisation providing health and social care services to the National Health Service.
- d) A position of authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.

7.1.3. Any Director who has a material interest in a matter as defined above shall declare such interest to the Board of Directors and:

- 7.1.3.1. shall not be present except with the permission of the Board of Directors in any discussion of the matter, and
- 7.1.3.2. shall not vote on any issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).

7.1.4. Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently

vacate their office if required to do so by a majority of the remaining Directors.

- 7.1.5. If Directors have any doubt about the relevance of an interest, he/she should discuss it with the Chair.
- 7.1.6. 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.
- 7.1.7. Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board of Director's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

## 7.2. Register of Interests

- 7.2.1. The Trust 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 that have been declared by both Executive and Non-Executive Directors.
- 7.2.2. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 7.2.3. The Register will be available to the public and the Trust Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

## **8. Compliance - Other Matters**

- 8.1. All Directors of the Trust shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 8.2. All Directors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors.
- 8.3. All Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life and the Trust's Code of Conduct for Directors as amended from time to time: -
  - Selflessness;
  - Integrity;
  - Objectivity;
  - Accountability;
  - Openness;
  - Honesty; and
  - Leadership.

## **9. Resolution of Disputes with Council of Governors**

- 9.1. Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.
- 9.2. The Chair, or Deputy Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 9.3. Failing resolution under 9.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal

meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

- 9.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to the Disputes Statement.
- 9.5. The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.
- 9.6. If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he/she shall advise the Council of Governors and Board of Directors accordingly.
- 9.7. On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8. On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the

Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

**10. Notification to Council of Governors**

The Board of Directors shall notify the Council of Governors of any major changes in the circumstances of the Trust, which have made or could lead to a substantial change to its financial well-being, healthcare delivery performance, reputation and standing or which might otherwise affect the Trust's compliance with the terms of its NHS provider licence, Constitution or the 2006 Act.

**11. Board of Directors' Performance**

The Chair shall, at least annually, lead a performance assessment process for the Board of Directors. This process should act as the basis for determining individual and collective professional development programs for Directors.

## **ANNEX 9 – FURTHER PROVISIONS**

### **Disqualification from membership**

1. A person may not become a member of the Trust if:
  - 1.1. He/she is under the age of eleven;
  - 1.2. Within the last five years he/she has been involved in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's employees, registered volunteers.

### **Termination of membership**

2. A member shall cease to be a member if:
  - 2.1. He/she dies;
  - 2.2. He/she resigns by notice to the Trust Secretary;
  - 2.3. He/she ceases to be entitled under this constitution to be a member of any of the Public Constituencies, or of any of the classes of the Staff Constituency;
  - 2.4. He/she is expelled under this constitution.
  - 2.5. If it appears to the Trust Secretary that he/she no longer wishes to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, he/she fails to establish that he/she wishes to continue to be a member of the Trust.
3. A member may be expelled by a resolution of the Council of Governors at a General Meeting. The following procedure is to be adopted:
  - 3.1. Any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust.
  - 3.2. If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
    - 3.2.1. dismiss the complaint and take no further action; or
    - 3.2.2. arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
  - 3.3. If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the

- member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 3.4. At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
  - 3.5. If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
  - 3.6. A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
  - 3.7. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a General Meeting.

### **Members meetings**

4. The Trust is to hold a members' meeting (called the annual members meeting) within eight months of the end of each financial year.
5. All members' meetings other than annual meetings are called special members' meetings.
6. All members' meetings are to be convened by the Trust Secretary by order of the Council of Governors.
7. Members' meetings are open to all members of the Trust, members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors and to members of the public. The Council of Governors may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend a members meeting.
8. The Council of Governors may decide where a members' meeting is to be held and may also for the benefit of members:
  - 8.1. arrange for the annual members meeting to be held in different venues each year:

8.2. make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.

9. At the annual members' meeting:

9.1. members of the Board of Directors shall present to the members:

- 9.1.1. the annual accounts and any report of the auditor on them;
- 9.1.2. any report of any other auditor of the Trust's affairs;
- 9.1.3. forward planning information for the next financial year.

9.2. the Council of Governors as delegated to the Trust Secretary shall present to the members:

- 9.2.1. a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of its staff constituency is representative of those eligible for such membership;
- 9.2.2. the progress of the membership strategy;
- 9.2.3. any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors; and
- 9.2.4. the results of the election and appointment of Governors will be announced.

10. Notice of a members meeting is to be given:

- 10.1. by notice to all members;
- 10.2. by notice prominently displayed at the registered office and at all of the Trust's places of business; and
- 10.3. by notice on the Trust's website,  
at least 14 clear days before the date of the meeting.

11. The notice must:

- 11.1. be given to the Council of Governors and the Board of Directors, and to the auditor;
- 11.2. state whether the meeting is an annual or special members meeting;
- 11.3. give the time, date and place of the meeting; and
- 11.4. indicate the business to be dealt with at the meeting.

12. The Trust may make arrangements for members to vote by post, or by using electronic communications.
13. Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is twenty members entitled to vote at the meeting.
14. It is the responsibility of the Council of Governors, the Chairman of the meeting and the Trust Secretary to ensure that at any members meeting:
  - 14.1.the issues to be decided are clearly explained;
  - 14.2.sufficient information is provided to members to enable rational discussion to take place;
  - 14.3.where appropriate, experts in relevant fields or representatives of special interest groups are invited to address the meeting.
15. The Chairman of the Trust or in their absence the Deputy Chair shall preside at all members meetings of the Trust. If neither the Chairman nor the Deputy Chair is present, those members of the Council of Governors who are present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act they shall be Chairman. If no Governor is willing to act as Chairman or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to be Chairman.
16. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
16. A resolution put to the vote at a members meeting shall be decided upon by a poll or show of hands.
17. The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote

## **Dispute Resolution Procedures**

18. Every unresolved dispute which arises out of the constitution between the Trust and:

- 18.1. a member; or
- 18.2. any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
- 18.3. any person bringing a claim under this constitution; or
- 18.4. an office-holder of the Trust

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Trust's Chairman. The arbitrator's decision will be binding and conclusive on all parties.

19. Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum to be determined by the Council of Governors. The arbitrator will decide how the costs of the arbitration will be paid.

## **Representative membership**

20. The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every two years.

21. The Council of Governors or as delegated to the Trust Secretary shall present to each annual members meeting:

- 21.1. a report on steps taken to secure that taken as a whole the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership;
- 21.2. the progress of the membership strategy; and
- 21.3. any changes to the membership strategy.