



**University Hospitals of
Derby and Burton**
NHS Foundation Trust

Constitution of University Hospitals of Derby and Burton NHS Foundation Trust (A Public Benefit Corporation)

Revision 9 – 1 July 2018

University Hospitals of Derby and Burton NHS Foundation Trust Constitution

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1 Name and status

The name of the Foundation Trust is University Hospitals of Derby and Burton NHS Foundation Trust (the Trust). The Trust is a Public Benefit Corporation authorised under the National Health Service Act 2006.

2 Principal purpose

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

3 Powers , Functions, Framework and Commitments

Powers

- 3.1 The powers of the Trust are set out in the 2006 Act (as amended), subject to any restrictions in the terms of Authorisation.
- 3.2 All powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director, in accordance with the Reservation of Powers to the Board and Delegation of Powers (known as the Scheme of Delegation).
- 3.4 The Trust may do anything that appears to it to be necessary or desirable for the purposes of or in connection with its functions.

In particular it may:

- 3.4.1 acquire and dispose of property,
- 3.4.2 enter into contracts,

- 3.4.3 accept gifts of property (including property to be held on Trust for the purposes of the Trust or for any purposes relating to the health service),
- 3.4.4 employ staff.
- 3.5 Any power of the Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing, or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 3.6 The Trust may borrow money for the purposes of or in connection with its functions, subject to the limit published by its Terms of Authorisation.
- 3.7 The Trust may invest money (other than money held by it as Trustee) for the purposes of or in connection with its functions. The investment may include investment by:
 - 3.7.1 forming, or participating in forming bodies corporate.
 - 3.7.2 otherwise acquiring membership of bodies corporate.
- 3.8 The Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person or body for the purposes of or in connection with its functions.

Functions

- 3.9 The function of the Trust is to provide goods and services, including education and training, research, accommodation and other facilities, for purposes related to the provision of health care.
- 3.10 Subject to any restrictions in the authorisation, the Trust may also carry on other functions for the purpose of making additional income available in order to carry on the Trust's principal purpose better.
- 3.11 The functions of the Trust under paragraph 25 (5) (Annual Accounts) of Schedule 7 of the 2006 Act shall be delegated to the Chief Executive (the Accounting Officer).

Framework

- 3.12 The affairs of the Trust are to be conducted by the Board of Directors, the Council of Governors and the Members in accordance with this Constitution. The Members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this Constitution.

Commitments

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

3.14 Respect for rights of people

3.14.1 In conducting its affairs, the Trust shall respect the rights of members of the community it serves, its employees and those dealing with the Trust as set out in the Charter of Fundamental Rights of the European Union.

3.15 Openness

3.15.1 In conducting its affairs, the Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

3.16 Prohibiting Distribution

3.16.1 The profits or surpluses of the Trust are not to be distributed either directly or indirectly in any way at all among members of the Trust.

3.17 Co-operation with bodies responsible for Health and Social Care

3.17.1 In exercising its functions the Trust shall co-operate with the Independent Regulator, Strategic Commissioning Services, Arm's Length Bodies (Special Health Authorities), Clinical Commissioning Groups, NHS Trusts and NHS Foundation Trusts and other key partners in Health and Social Care.

4 Membership and constituencies

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

4.1.1 a public constituency

4.1.2 a staff constituency

4.2 The members of the Trust are those individuals whose names are entered in the register of members. Every member is either a member of a public constituency or a member of the staff constituency.

4.3 The role of members is to attend and participate at Members' Meetings, to vote in elections to, and stand for election for the Council of Governors, and to take such other part in the affairs of the Trust as is provided in this Constitution. Arrangements for Member's Meetings are set out in Annex 8

4.4 Subject to this Constitution, membership is open to any individual who:

4.4.1 is over 16 years of age.

4.4.2 is entitled under this Constitution to be a member of one of the public constituencies or the staff constituency.

4.4.5 in the case of a former member of the staff constituency who has decided to become a member after originally declining the invitation.

- 4.5 Unless there is some defect in the application, the Trust Secretary shall enter the name of a member of the public constituency into the register of members within 21 days from the date on which the application for membership is received by the Trust. The Trust Secretary shall enter the name of a member of the staff constituency into the register of members within 21 days from the end of the opt-out period referred to in paragraph 7.5.

5 Application for membership

- 5.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust (see also 7.5 below).

6 Public Constituency

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

7 Staff Constituency

- 7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 7.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 7.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Those individuals who are eligible for membership of the Trust by reason of paragraph 7.1 above are referred to collectively as the Staff Constituency.
- 7.3 The Staff Constituency shall be divided into 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.
- 7.4 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

- 7.5 An individual who is:

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

7.5.2 invited by the Trust to become a member of the Staff Constituency

shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

8 Restriction on membership

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

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

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

8a Annual Members' Meeting

8a.1 The Trust shall hold an Annual meeting of its members ('Annual Member's Meeting'). The Annual Members' meeting shall be open to the public.

8a.2 Further provisions for the Annual Members' Meeting are set out in Annex 8.

9 Council of Governors – composition

9.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.

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

9.3 The Governors, other than the Appointed Governors, shall be chosen by election by their constituency. The number of governors to be elected by each constituency is specified in Annex 3.

10 Council of Governors – election of governors

10.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules. The Board of Directors, in consultation with the Council of Governors, will decide which of the two voting methods (Single Transferable Vote or First Past the Post) set out in the model rules is to be used.

10.2 The Model Rules for Elections, as published from time to time by the NHS Providers form part of this constitution and are attached at Annex 4.

10.3 A subsequent variation of the Model Election Rules shall not constitute a variation of the terms of this constitution for the purposes of paragraph 37 of the constitution (amendment of the constitution).

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

11 Council of Governors - tenure

Elected Governors

11.1 An Elected Governor may hold office for a period of up to 3 years ordinarily commencing on 1 July each year.

11.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected, or if they are disqualified for any of the reasons set out in this Constitution.

11.3 An Elected Governor shall be eligible for re-election at the end of their term, subject to paragraph 11.4 below;

11.4 An Elected Governor may not hold office for longer than 9 consecutive years.

11.4a An Elected Governor who has completed 9 consecutive years shall be eligible to stand again for election following a break of at least 12 months.

Appointed Governors

11.5 An Appointed Governor may hold office for a period up to 3 years commencing on 1 July;

11.6 An Appointed Governor shall be eligible for re-appointment after the end of that period; subject to paragraph 11.7 below;

11.7 An Appointed Governor may not hold office for longer than 9 consecutive years;

11.8 An Appointed Governor shall cease to hold office if the appointing organisation terminates their appointment or if they are disqualified for any of the reasons set out in this Constitution.

12 Council of Governors –disqualification and removal

12.1 The following may not become a Governor and if already holding such office will immediately cease to do so:

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

- 12.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
 - 12.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 12.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 12.3 Further provision as to the circumstances in which an individual may not become or continue as a Governor and provision for the removal of Governors is set out in Annex 5.

12a Council of Governors – duties of governors

- 12a.1 The general duties of the governors are:
- 12a.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors and
 - 12a.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public
- 12a.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.
- 12a.3 Further provision as to the roles and responsibilities is set out in Annex 5.

13 Council of Governors – meetings of governors

- 13.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 20) or, in their absence the Vice Chair of the Trust (appointed in accordance with the provisions of paragraph 21 below), shall preside at meetings of the Council of Governors.
- 13.2 The Council of Governors shall appoint one of its number to be the Nominated Lead Governor, whose role shall include that of Acting Chair. The Acting Chair shall preside at meetings of the Council of Governors in the absence of the Chair and Vice Chair of the Trust or where the Chair and Vice Chair are excluded from the meeting by virtue of a declared interest in the item under discussion. If the Lead Governor is not present, such Governor as the Governors present shall choose shall preside.
- 13.3 All meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise [by appropriate resolution] in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The

Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

- 13.4 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.

14 Council of Governors – Standing Orders

- 14.1 The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

15 Council of Governors - conflicts of interest of governors

- 15.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest as soon as they become 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.

- 15.2 Further provisions on disclosure of interests are listed in Annex 5.

16 Council of Governors – travel expenses

- 16.1 The Trust may pay travelling and other expenses to Council members at such rates as it decides. These are to be disclosed in the Annual Report.

- 16.2 Governors are not to receive remuneration.

17 Council of Governors – further provisions

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

18 Board of Directors – composition

- 18.1 The Trust is to have a Board of Directors, which shall comprise Executive Directors and Non-Executive Directors.

- 18.2 The business of the Trust is to be managed by the Board of Directors, who (subject to this Constitution) shall exercise all the powers of the Trust, including:

- 18.2.1 To act as the decision making body, within the Reservation of Powers to the Board and Delegation of Powers (known as the Scheme of Delegation) and to be accountable for the subsequent risks and liabilities that rest with this responsibility.
- 18.2.2 To set the strategic direction of the Trust within the overall limits set out in the Terms of Authorisation set by the Independent Regulator, to define its annual and longer-term objectives and agree plans to achieve them, taking into account the views of the Council of Governors.
- 18.2.3 To oversee the delivery of planned results by monitoring performance against objectives and ensuring that corrective action is taken when necessary.
- 18.2.4 To ensure financial stewardship through value for money, financial control and financial planning and strategy.
- 18.2.5 To ensure high standards of corporate governance and personal behaviour are maintained in the conduct of business of the Trust.
- 18.2.6 To appoint and remunerate Executive Directors through powers delegated to a Committee.
- 18.2.7 To ensure effective dialogue between the Trust and the local community on its plans and performance and that these are responsive to the needs of the community. The Council of Governors will similarly ensure that these reflect the views of the Trust's membership.
- 18.2.8 To work collaboratively with the Council of Governors to ensure that each body understands their respective roles and responsibilities and develop practical ways of engaging and interacting with each other.
- 18.2.9 A third party dealing in good faith with the Trust shall not be affected by any defect in the process by which Directors are appointed or any vacancy on the Board of Directors.

18.3 The Board of Directors is to comprise:

- 18.3.1 a Non-Executive Chair,
- 18.3.2 a minimum of 4 other Non-Executive Directors
- 18.3.3 one of the Non-Executive Directors will be a person nominated by the University of Nottingham;
- 18.3.4 The following Executive Directors.
 - 18.3.4.1 a Chief Executive, who shall be the Accounting Officer
 - 18.3.4.2 a finance Director.

- 18.3.4.3 a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 18.3.4.4 a registered nurse or a registered midwife.
- 18.3.4.5 a minimum of 1 other Executive Director.

- 18.4 The Board of Directors will have a Reservation of Powers to the Board and Delegation of Powers (known as Scheme of Delegation) that will allow it to delegate powers to a Committee of Directors or to an Executive Director.
- 18.5 The Board of Directors may establish other committees of Directors and/or Non-Executive Directors and delegate powers accordingly.
- 18.6 The Board of Directors shall appoint one of the Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director should be available to Members and Governors if they have concerns which contact through the normal channels of the Chair and Chief Executive has failed to resolve or for which contact is inappropriate. The Senior Independent Director could be the Vice Chair.

18a Board of Directors – General Duty

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

19 Board of Directors – qualification for appointment as a Non-Executive Director

- 19.1 A person may be appointed as a Non-Executive Director only if –
 - 19.1.1 they are a member of the Public Constituency, or
 - 19.1.2 they are the nominated representative of the University of Nottingham.
 - 19.1.3 they are not disqualified by virtue of paragraph 23 below.

20 Board of Directors – appointment and removal of Chair and other Non-Executive Directors

- 20.1 The Council of Governors at a general meeting shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.
- 20.2 Appointment of the Chair and Non-Executive Directors shall require the approval of a majority of the Governors present and voting at a meeting of the Council of Governors.
- 20.3 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the entire Council of Governors voting in

person or by proxy at a properly constituted general meeting of the Council of Governors.

- 20.4 The procedures for the appointment and removal of the Chair and other Non-Executive Directors are set out in Annex 5.

21 Board of Directors – appointment of Vice Chair

- 21.1 The Council of Governors at a general meeting shall appoint one of the Non-Executive Directors as a Vice Chair on recommendation of the Chair. If the Chair is unable to discharge his office as Chair of the Trust the Vice Chair shall be Acting Chair of the Trust.

22 Board of Directors - appointment and removal of the Chief Executive and other Executive Directors

- 22.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 22.2 The appointment of the Chief Executive shall require the approval of the majority of the governors present and voting at a meeting of Council of Governors.
- 22.3 A Committee consisting of the Chair, the Chief Executive and other Non-Executive Directors shall appoint or remove the other Executive Directors. The Committee appointed for the purposes of this paragraph may, at its discretion, include an external assessor to provide advice only.
- 22.4 The Chief Executive shall appoint one of the Executive Directors as Deputy Chief Executive, subject to the approval of the Board of Directors.
- 22.5 Procedures for the removal of the Chief Executive and Executive Directors are listed in their individual Contracts of Employment with the Trust.

23 Board of Directors – disqualification

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

- 23.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 23.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it.
- 23.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 23.4 a person who is a member of the Council of Governors, or a Governor or (unless the Board of Directors approves a dual directorship) a Director of

another Foundation Trust or a health service body. Under the 2006 Act 'health service body' means a body which is a health service body for the purposes of section 9 stated below:

- a) a NHS Commissioning Board
 - b) a Clinical Commissioning Group
 - c) Arm's Length Body (Special Health Authority)
 - d) a Local Health Board
- 23.5 in the case of a Non-Executive Director, they are no longer a member of the public constituency, or no longer the nominated representative of the University of Nottingham;
- 23.6 a person whose tenure of office as a chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 23.7 a person who has had their name removed, by a direction under the 2006 Act (disqualification of practitioners) from any list prepared under that Act, and have not subsequently had their name included on such a list;
- 23.8 a person who within the preceding two years been dismissed, otherwise than by reason of redundancy or ill-health, from any paid employment with a health service body;
- 23.9 in the case of a Non-Executive Director they have failed to fulfil any training requirement established by the Board of Directors; or they have failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.
- 23.10 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 23.11 a person who is a spouse, partner, parent or child of a member of the Board of Directors of the Trust.
- 23.12 a person who is a member of a Local Authority's Scrutiny Committee with statutory powers to scrutinise health matters.
- 23.13 a person who is the subject of a sex offender order.

23a Board of Directors – meetings

- 23a.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.
- 23a.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable

after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

24 Board of Directors – Standing Orders

The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

25 Board of Directors - conflicts of interest of Directors

25.1 The duties that a Director of the Trust has by virtue of being a Director include in particular;

25.1.1 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.

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

25.2 The duty referred to in sub-paragraph 25.1.1 is not infringed if –

25.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

25.2.2 The matter has been authorised in accordance with the Constitution

25.3 The duty referred to in sub-paragraph 25.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

25.4 In sub paragraph 25.1.2, “third party” means a person other than –

25.4.1 the Trust, or

25.4.2 person acting on its behalf

25.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.

25.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

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

25.8 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.

25.9 A Director need not declare an interest –

- 25.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 25.9.2 If, or to the extent that, the directors are already aware of it;
- 25.9.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –
 - 25.9.3.1 By a meeting of the Board of Directors, or
 - 25.9.3.2 By a Committee of the Directors appointed for the purpose under the Constitution
- 25.10 The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.
- 25.11 Further provisions as to conflicts of interests are in Annex 7.

26 Board of Directors – remuneration and terms of office

- 26.1 The Council of Governors at a general meeting shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
- 26.2 The Council of Governors shall ensure that the Non-Executive Directors are fairly rewarded for their contribution to the organisation, having proper regard to the financial circumstances of the Trust and local and national market forces.
- 26.3 The Trust shall establish a Committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.
- 26.4 The remuneration and allowances for Directors are to be disclosed in the Annual Report and Accounts.
- 26.5 The Trust may pay travelling and other expenses to Executive Directors and Non-Executive Directors at such rates as it decides. These are to be disclosed in the Annual Report and Accounts.

27 Registers

The Trust shall have:

- 27.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs.
- 27.2 a register of members of the Council of Governors;

- 27.3 a register of interests of Governors;
- 27.4 a register of Directors; and
- 27.5 a register of interests of the Directors.

28 Admission to and removal from the registers

- 28.1 The Secretary shall add to the register of members the name of any member who is accepted as a member under the provisions of this Constitution.
- 28.2 The 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.

29 Registers – inspection and copies

- 29.1 The Trust shall make the registers specified in paragraph 27 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 29.2 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.
- 29.3 So far as the registers are required to be made available:
 - 29.3.1 they are to be available for inspection free of charge at all reasonable times; and;
 - 29.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 29.4 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.

30 Documents available for public inspection

- 30.1 Notwithstanding the requirements of the Freedom of Information Act (2000) The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times and shall be available on the Trust's website:
 - 30.1.1 a copy of the Constitution;
 - 30.1.2 a copy of the current licence;
 - 30.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

- 30.1.4 a copy of the latest annual report;
 - 30.1.5 a copy of the latest information as to its forward planning; and
 - 30.1.7 a copy of the Membership Development Strategy.
- 30.2 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:
- 30.2.1 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.
 - 30.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 30.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 30.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 30.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 30.2.6 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(the Independent Regulator's decision), 65KB (Secretary of State's response to the Independent Regulator'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.
 - 30.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 30.2.8 a copy of any final report published under section 65I(administrator's final report),
 - 30.2.9 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.
 - 30.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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

31 Auditor

31.1 The Trust shall have an External Auditor and is to provide the auditor with every facility and all information, which they may reasonably require for the purposes of their functions under the 2006 Act.

31.2 A person may only be appointed as the auditor if they (or in the case of a firm of each of its members) is a member of one or more of the bodies referred to in Paragraph 23 of Schedule 7 to the 2006 Act.

31.3 The Council of Governors shall appoint or remove the External Auditor at a general meeting of the Council of Governors.

31.4 The External Auditor is to carry out his duties in accordance Schedule 10 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

32 Audit Committee

32.1 The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

33 Annual Accounts

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

33.2 The Independent Regulator may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts

33.3 The accounts are to be audited by the Trust's External Auditor.

33.4 The Trust shall prepare in respect of each financial year annual accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.

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

33.6 The Trust shall:

33.6.1 lay a copy of the annual accounts, and any report of the financial auditor on them, before Parliament; and

33.6.2 once it has done so, send copies of those documents to the Independent Regulator.

34 Annual Report and Forward Plans and Non-NHS work

34.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.

34.2 The Trust shall give information as to its forward planning in respect of each financial year to the Independent Regulator.

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

34.4 In preparing the forward planning document (referred to as the Annual Plan), the Directors shall have regard to the views of the Council of Governors.

34.5 Each forward plan must include information about –

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

34.5.2 the income it expects to receive from doing so.

34.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 34.5.1 the Council of Governors must –

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

34.6.2 notify the Directors of the Trust and of its determination.

34.7 Where 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 shall not be implemented unless more than half of the members of the Council of Governors of the Trust present and voting at a meeting approve its implementation.

34.8 The reports are to give:

34.8.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its constituencies is representative of those eligible for such membership; and

34.8.2 any other information Independent Regulator requires.

34.9 The Trust is to comply with any decision the Independent Regulator makes as to:

34.9.1 the form of the reports;

34.9.2 when the reports are to be sent to him;

34.9.3 the periods to which the reports are to relate.

35 Presentation of the Annual Accounts and Reports to the Council of Governors and Members

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

35.1.1 the annual accounts

35.1.2 any report of the auditor on them

35.1.3 the annual report

35.2 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.

35.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 35.1 with the Annual Members' Meeting.

36 Instruments and execution of documents

36.1 The Trust shall have a seal.

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

36.3 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.

37 Amendments to the Constitution

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

37.1.1 More than half of the members of the Council of Governors of the trust present and voting at the meeting approve the amendments, and

37.1.2 More than half of the members of the Board of Directors of the trust present and voting at the meeting approve the amendments.

- 37.2 Amendments made under paragraph 37.1 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.
- 37.3 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) –
- 37.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
- 37.3.2 The trust must give the members an opportunity to vote on whether they approve the amendment.
- 37.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.
- 37.5 Amendments by the Trust of its Constitution are to be notified to the Independent Regulator. For the avoidance of doubt, the Independent Regulator'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.

38 Dispute Resolution Procedures

- 38.1 Every unresolved dispute which arises out of the Constitution between the Trust and:
- 38.1.1 a member; or
- 38.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
- 38.1.3 any person bringing a claim under this Constitution; or
- 38.1.4 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 Institute of Arbitrators. The arbitrator's decision will be binding and conclusive on all parties. The arbitrator will decide how the costs of the arbitration shall be paid.

39 Mergers etc and Significant Transactions

- 39.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the entire Council of Governors not just those who attend the meeting where the approval is to be decided.

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

39.3 The Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

40 Dissolution of the Trust

40.1 The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

41 Head Office

41.1 The Trust's Head Office is at:
University Hospitals of Derby and Burton NHS Foundation Trust
Royal Derby Hospital
Uttoxeter Road
Derby.
DE22 3NE

41.2 The Trust will display its name on the outside of its head office and every other place at which it carries on business, and on its website, business letters, notices, advertisements, other publications.

41.3 Changes to the address and website will require a change to the Constitution and will be approved by the Independent Regulator.

42 Notices

42.1 Any notice required by this Constitution to be given shall be given in writing or shall be 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.

42.2 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.

43 Indemnity

43.1 Governors, the Board of Directors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The

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

44 Trust Secretary

44.1 The Trust shall have a Trust Secretary who may be an employee. The Trust Secretary may not be a member of the Council of Governors. The Trust Secretary's functions shall include:

44.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;

44.1.2 summoning and attending all Members' meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;

44.1.3 keeping the register of members and other registers and books required by this Constitution;

44.1.4 having charge of the Trust's seal;

44.1.5 publishing to Members in an appropriate form information which they should have about the Trust's affairs;

44.1.6 preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.

44.2 The Trust Secretary will be appointed (or removed) by a nominated committee consisting the Chair, Chief Executive and a Non-Executive Director.

44.3 Minutes of every Members' meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of Board meetings will be read at the next meeting and signed by the Chair. The signed minutes will be conclusive evidence of the events of the meeting.

45. Interpretation and definitions

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

45.2 References in this Constitution and its annexes to legislation include all amendments, replacements, or enactments made.

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

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

45.5 In this Constitution:

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

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

Authorisation means an authorisation given by the Independent Regulator.

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 8a of this Constitution

Appointed Governor means those governors appointed by the appointing organisations.

Appointing organisations means those organisations named in this Constitution who are entitled to appoint governors.

Area of the Trust means the area specified in Annex 1 of this Constitution.

Board of Directors means the Board of Directors as constituted in accordance with this Constitution.

Chair is the Chair of the Board of Directors, interchangeable with the term Chairman.

Chief Executive means the Chief Executive and Accounting Officer

Code of Conduct for Governors means the Trust's Code of Conduct for Governors as amended from time to time, by resolution of the Board of Directors and Council of Governors.

Council of Governors means the Council of Governors as constituted within this Constitution.

Director means an Executive or Non-Executive member of the Board of Directors.

Education Governor means a governor appointed by an appointing organisation from the education sector.

Elected Governors means those governors elected by the public constituency and the staff constituency.

Financial year means:

- a. a period beginning with the date on which the Trust is authorised and ending with the next 31 March; and
- b. each successive period of twelve months beginning with 1 April.

Governor means an elected or appointed member of the Council of Governors.

Local Authority Governor means those governors appointed by one or more local authorities whose area includes whole or part of the area of the Trust.

Member means a member of the Trust.

Monitor means, the Independent Regulator, as provided by section 61 of the 2012 Act;

Nominated Lead Governor – a Governor appointed by the Council of Governors to carry out the role as defined by the Independent Regulator.

Non- Executive Director means a person appointed by the Council of Governors as a member of the Board of Directors. This includes the Chair of the Trust.

CCG Governor means a governor appointed by a Clinical Commissioning Group under this Constitution.

Public Constituency means the collective of all members living within the area of the Trust

Public Governor means those governors elected by members of the public constituency

Trust Secretary means the Trust Secretary of the Trust or any other person appointed to perform the duties of the Secretary.

Senior independent Director means the Non-Executive Director appointed by the Board of Directors, in consultation with the Council of Governors, to fulfil the duties described in the job description.

Staff Constituency means the collective of all staff members.

Staff Governor means a governor elected by the staff constituency.

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

the **Trust** means the University Hospitals of Derby and Burton NHS Foundation Trust.

University Governor means a governor appointed by the University of Nottingham

Vice-Chair means the Non-Executive Director appointed on recommendation by the Chair by the Council of Governors in accordance with Paragraph 21 of this Constitution.

Voluntary Services Appointed Governor means a governor appointed by the Derby Council for Voluntary Services and Support Staffordshire or by other similar partnership organisations nominated by the Council of Governors in its place.

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

Revision History

(Revision 1 – February 2005)

(Revision 2 – August 2007)

(Revision 3 – March 2010)

(Revision 4 – August 2010)

(Revision 5 – March 2013)

(Revision 6 – September 2013)

(Revision 7 – March 2014)

(Revision 8 – April 2015)

(Revision 9 – 1 July 2018)

Contact: Trust Secretary, Trust HQ, Royal Derby Hospital, Uttoxeter Road, Derby, 01332 786260

ANNEX 1 – THE PUBLIC CONSTITUENCY

1. Area of the Trust

- 1.1 Eligibility to become a public member will be available to people living within the defined catchment area of the Trust. This includes residents from the following areas (defined by individual or combined Local Authority electoral boundaries for the purposes of local government elections):

Derby City

Amber Valley

Derbyshire Dales and South Derbyshire (combined electoral areas)

Erewash

East Staffordshire

Lichfield and Tamworth (combined electoral areas)

North West Leicestershire and the Rest of England (excluding the Trust's other public constituencies)

- 1.2 Membership of a public constituency is open to individuals:

who live in one of the public constituencies set out above; and

who are not eligible to be members of the staff constituency, and

are not already a member of another public constituency within the area of the Trust.

- 1.3 The minimum number of members of each public constituency is to be 40 (280 in total for all of the public constituencies)

- 1.4 Membership will remain valid whilst ever a person resides in the above catchment area.

ANNEX 2 – THE STAFF CONSTITUENCY

1. Staff constituency

- 1.1 Members of the staff constituency are:
 - 1.1.1 employed under a contract of employment by the Trust which has no fixed term, or a fixed term of at least 12 months, or
 - 1.1.2 been continuously employed by the Trust for at least 12 months;
 - 1.1.3 been invited to become members of the Trust and who have not opted out of membership within the opt-out period specified in the invitation.
- 1.2 The minimum number of members of the staff constituency is to be 500 in total across the classes.
- 1.3 Subject to the transitional arrangements outlined below the classes within the Staff Constituency are:
 - a) Royal Derby Hospital - 5 Staff Governor seats
 - b) Queen's Hospital – 3 Staff Governor seats
 - c) London Road Community Hospital – 1 Staff Governor seat
 - d) Sir Robert Peel Community Hospital and Samuel Johnson Community Hospital – 1 Staff Governor seat

Staff site will be identified using the base registered in the electronic staff record of individual staff members.

2. Transitional arrangements

- 2.1 From the transaction date for a three month period (the period to allow elections to take place) the classes within the Staff Constituency will be:
 - a) Royal Derby Hospital and London Road Community Hospital – 7 Staff Governor seats (the DTHFT Staff Governors in post at transaction date).
 - b) Queen's Hospital site – 3 Staff Governor seats (vacant until the conclusion of the above three month post-transaction election period).
 - b) Sir Robert Peel Community Hospital and Samuel Johnson Community Hospital – 1 Staff Governor seat (vacant until the conclusion of the above three month post-transaction election period).

2.2 From the conclusion of the three month post-transaction election period the classes of the Staff Constituency are described in 1.3 above.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

1. The Council of Governors is to consist of Public Governors, Staff Governors and Appointed Governors from Clinical Commissioning Groups (CCGs), Local Authorities, the University of Nottingham, Education and Voluntary Services.
2. The Council of Governors of the Trust is to comprise:
3. 25 (reducing to 22 after the three month post-transaction election period) Public Governors, which must be more than half the total membership of the Council of Governors appointed by the public constituencies set out in Annex 1, which are as follows:

	No of Governor seats as at Transaction date	No of Governor seats at the conclusion of the three month post-transaction election period
Derby City:	9	7
East Staffordshire:	4	4
Lichfield and Tamworth:	3	3
Amber Valley:	4	2
Erewash:	2	1
Derbyshire Dales and South Derbyshire:	2	4
North West Leicestershire and the Rest of England *	1	1

* excluding other Public Constituencies

Staff Governor seats;	11**	10
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** refer to the transitional arrangements identified in 1.4 of Annex 2

2 Clinical Commissioning Group (CCG) Governors

3 Local Authority Governors;

1 University Governor;

- 1 Education Governor;
- 2 Voluntary Services Governors.
4. The following organisation shall appoint a CCG Governor;
- Southern Derbyshire CCG
 - East Staffordshire CCG
5. The organisations that may together appoint Local Authority Governors are:
- Derbyshire County Council
 - Staffordshire County Council
 - Derby City Council
6. The organisation that may appoint a University Governor is the University of Nottingham.
7. The organisation that may appoint the Education Governor is the University of Derby, University of Wolverhampton and University of Leicester to be appointed on rotation on a process to be agreed.
8. The partnership organisations that may appoint Voluntary Services Governors are the Derby Council for Voluntary Service (Community Action) or another similar partnership organisation nominated by the Council of Governors in its place and Support Staffordshire or another similar partnership organisation nominated by the Council of Governors in its place.
9. Members of the public constituencies may elect any of their number to be a Public Governor and members of the staff constituency may elect any of their number to be a Staff Governor.
10. If contested, the elections will take place by secret ballot using either the Single Transferable Vote system or the First Past the Post system, as set out in the Model Election Rules. The Trust Board, in consultation with the Council of Governors will decide which of the two voting methods set out in the model rules is to be used.
11. The election rules including the arrangements governing nominations, the advertisement of candidates, rules regarding canvassing, voting, and the election of reserves to fill casual vacancies are to be determined by the Board of Directors, in consultation with the Council of Governors, subject to the Model Election Rules.
12. The Election Rules for the Council of Governors are set out in Annex 4 to this constitution.

13. Local Authority Governors - The Secretary, will consult with each Local Authority listed in 5 above to collectively agree a process for agreeing the appointment of Local Authority Governors. The appointment may not be made jointly.
14. The composition of the Council of Governors, subject to the 2006 Act, shall seek to ensure that:
 - the interests of the community served by the Trust are appropriately represented;
 - the level of representation of the public constituencies, the staff constituency and the partnership organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs

and to this end, the Council of Governors

- shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Membership Development Strategy and which specifies the allocation of Public Governors to particular geographical areas, and
- shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and when appropriate shall propose amendments to this Constitution.
- when appropriate shall propose amendments to this Constitution.

15. Transitional Arrangements

15.1 For the elections held in the transaction year, terms of office for the following constituency classes will be phased as:

Staff Constituency

15.1.1 Royal Derby Hospital (5) – the first three highest polling candidates will serve up to a three year term of office, the fourth and fifth highest polling candidates will serve up to a two year term of office;

15.1.2 Queens Hospital (3) - the first two highest polling candidates will serve up to a three year term of office, the third highest polling candidate will serve up to a two year term of office.

Public Constituency

15.1.3 East Staffordshire (4) - the first two highest polling candidates will serve up to a three year term of office, the third and fourth highest polling candidates will serve up to a two year term of office.

15.1.4 Lichfield and Tamworth (3) - the first two highest polling candidates will serve up to a three year term of office, the third highest polling candidates will serve up to a two year term of office.

15.2 Terms of office for all other areas in the elections held in the transaction year will be for up to three years. If there are any uncontested elections in the areas covered in 15.1.1 – 15.1.4 above, the phasing of terms of office will be agreed by drawing lots.

15.3 Terms of office referred to in 15.1 – 15.2 will be shortened in line with the transaction date to phase back to the July-June Governor year.

ANNEX 4 - MODEL ELECTION RULES 2014

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1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

22. List of eligible voters
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24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information

- 31. Issue of replacement voting information
- 32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 33. Procedure for remote voting by internet
- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

PART 6: COUNTING THE VOTES

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
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PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

- FPP52. Declaration of result for contested elections
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PART 8: DISPOSAL OF DOCUMENTS

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
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- FPP59. Countermand or abandonment of poll on death of candidate

STV59. Countermand or abandonment of poll on death of candidate

PART 10: ELECTION EXPENSES AND PUBLICITY

Expenses

- 60. Election expenses
- 61. Expenses and payments by candidates
- 62. Expenses incurred by other persons

Publicity

- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
- 65. Meaning of “for the purposes of an election”

PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES

- 66. Application to question an election

PART 12: MISCELLANEOUS

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

“*council of governors*” means the council of governors of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of
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
Close of the poll	By 5.00pm on the final day of the election.

3. Computation of time

3.1 In computing any period of time for the purposes of the timetable:

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

7.1 The corporation is to co-operate with the returning officer in the exercise

of his or her functions under these rules.

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1 The returning officer is to publish a notice of the election stating:

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

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

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination form is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1 The returning officer is to prepare and publish a statement showing the

candidates who are standing for election.

15.2 The statement must show:

- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates

are to be declared elected in accordance with Part 7 of these rules.

- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

- (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
- (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
- (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

21.1 The corporation shall require each voter who participates in an election

for a public or patient constituency to make a declaration confirming:

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

(“declaration of identity”)

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

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

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

Action to be taken before the poll

22. List of eligible voters

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member’s e-mail address, if this has been provided

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

22.3 The corporation may decide that the e-voting information is to be sent

only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

23.1 The returning officer is to publish a notice of the poll stating:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope,
- (b) the ID declaration form (if required),

- (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
 - (d) a covering envelope;
- ("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

("e-voting information").

24.3 The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.
- 26. E-voting systems**
- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that

- constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
 - (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

26.6

The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (ii) the candidate or candidates for whom the voter has voted; and
 - (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the

- voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
 - (a) is satisfied as to the voter’s identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

(a) the name of the voter, and

(b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and

(c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

(a) is satisfied as to the voter’s identity,

(b) has no reason to doubt that the voter did not receive the original voting information,

(c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):

(a) the name of the voter

(b) the details of the unique identifier of the replacement ballot paper, if applicable, and

- (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1 If a person applies for replacement voting information 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 replacement voting information unless, in addition to the requirements imposed by 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 if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
 - (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

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

34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

- (a) a covering envelope, or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

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

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

37. Validity of votes

37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.

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

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

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

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

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

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

the poll.

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

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

38. Declaration of identity but no ballot paper (public and patient constituency)¹

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

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

39. De-duplication of votes

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

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

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

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

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

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

40. Sealing of packets

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

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

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record.

“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 document:

(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 STV49,

“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 STV46,

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

“*transfer value*” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

- (a) count and record the number of:

- (iii) ballot papers that have been returned; and
 - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 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.

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record 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.

STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

STV44.5 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 rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.3 A ballot paper on which a vote is marked:

- (a) elsewhere than in the proper place,
 - (b) otherwise than by means of a clear mark,
 - (c) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

- FPP44.4 The returning officer is to:
- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
 - (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

- FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- (a) does not bear proper features that have been incorporated into the ballot paper,
 - (b) voting for more candidates than the voter is entitled to,
 - (c) writing or mark by which voter could be identified, and
 - (d) unmarked or rejected because of uncertainty,

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

- FPP44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
 - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
 - (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

- FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

- FPP448 A text voting record on which a vote is marked:

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

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

she can be identified by it.

FPP44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

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

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

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (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”).

STV46.3 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 rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents 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 ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 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 documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents 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 ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is

given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), 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.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents 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.

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents 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 ballot documents 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 ballot documents of the candidate on whom the lot falls shall be transferred first.

STV48.2 The returning officer shall, on each transfer of transferable ballot

documents under rule STV47:

- (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.

STV48.3 All ballot documents transferred under rule STV47 or STV49 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 ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document 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.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, 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 rule STV49.12 applies, the candidates with the then lowest votes).

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
 - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 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.

STV49.11 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 rules STV47.5 to STV47.10 and rule STV48.

STV49.12 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.

STV49.13 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.

STV50. Filling of last vacancies

STV50.1 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.

STV50.2 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.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

STV51.1 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 STV47.10.

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

STV51.3 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.

STV51.4 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.

FPP51. Equality of votes

FPP51.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution

pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

- (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 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 STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

53.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:

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

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

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

- (a) the disqualified documents, with the list of disqualified documents

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

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

54.3 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.

55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

57.2 With the exception of the documents listed in rule 58.1, 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.

57.3 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.

58. Application for inspection of certain documents relating to an election

58.1 The corporation may not allow:

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

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

58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,

(d) production or opening,

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

58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and

39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

FPP59.6 The returning officer is to endorse on each packet a description of:

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot documents 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 documents 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.

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 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.

62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

63.1 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.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, 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.

63.3 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.

64. Information about candidates for inclusion with voting information

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

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

- (“numerical voting code”), and
- (c) a photograph of the candidate.

65. Meaning of “for the purposes of an election”

- 65.1 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.
- 65.2 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

66. Application to question an election

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 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.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is

reasonably practicable.

- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

69.1 A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:

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

70. Delay in postal service through industrial action or unforeseen event

70.1 If industrial action, or some other unforeseen event, results in a delay in:

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Contents

- a) Eligibility to be a Governor
- b) Requirement of Governor to notify Trust
- c) Disclosure of interests
- d) Termination of office and removal of Governor
- e) Terms of office
- f) Vacancies amongst Governors
- g) Roles and responsibilities
- h) Appointment and removal of Non-Executive Director (including Chair and Vice Chair)
- i) Remuneration of Chair and other Non-Executive Directors
- j) Dispute Resolution between Council of Governors and Board of Directors

a) Eligibility to be a Governor (see also Paragraph 12 of the constitution)

- 1 A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
 - 1.1 they are a Director of the Trust (whether Executive or Non-Executive) or a Governor or Director of another Foundation Trust or another health service body (unless they are appointed by an organisation which is a health service body). Health service body is defined in the 2006 Act and listed in paragraph 23.4 of the Trust's Constitution;
 - 1.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 1.3 they are a vexatious complainant as determined by the Trust's complaints policy or procedures;
 - 1.4 they have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body;
 - 1.5 they are a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 1.6 they are a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
 - 1.7 they are a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
 - 1.8 they are a person whose tenure of office as the Chair or as a Member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 1.9 they are incapable by reason of illness or injury of carrying out the duties of a Governor;
 - 1.10 they have previously been removed as a Governor or expelled from membership of another Foundation Trust;
 - 1.11 they have an open claim against the Trust and have issued legal proceedings in respect of such a claim;
 - 1.12 they refuse a Disclosure and Barring Service (DBS) check (or any subsequent system adopted) or on return of the DBS check, it is noted that the person is

no longer eligible under this constitution to be a Governor. Any undisclosed convictions reported under a DBS check will be considered by the Chair with regard to the future eligibility of that Governor;

- 1.13 they failed to sign and deliver to the Trust Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's Code of Conduct;
- 1.14 they have failed to undertake any training which the Board of Directors requires all Governors to undertake;
- 1.15 they refuse to sign a declaration in the form specified by the Council of Governors that they are a member of a public constituency or the staff constituency as the case may be and are not prevented from being a member of the Council of Governors;
- 1.16 in the case of an elected Staff Governor, they are serving a period of suspension from their duties in the Trust, or they cease to be a member of staff or a member of the staff constituency by whom they were elected. For clarity if a Staff Governor is suspended from duties for any reason they will also be suspended from their role as governor for the duration of their suspension. Whilst a Staff Governor is under suspension, the Staff Governor cannot attend meetings of the Council of Governors as a member of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of section d of Annex 5 of this Constitution.
- 1.17 in the case of an elected Public Governor, they cease to be a member of the constituency by whom they were elected;
- 1.18 in the case of an Appointed Governor, the appointing organisation terminates the appointment, or they leave, retire or are suspended from their employment. If an Appointed Governor is suspended from their duties for any reason by the appointing organisation they will also be suspended from their role as Governor for the duration of their suspension. Whilst an Appointed Governor is under suspension, the Appointed Governor cannot attend meetings of the Council of Governors as a member of the Council of Governors, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of section d of Annex 5 of this Constitution.;
- 1.19 they are removed from the Council of Governors by a resolution approved by a two-thirds majority of the Council of Governors present and voting at a general meeting on the grounds that:
 - They have committed a serious breach of the Trust's Code of Conduct, which may include a failure to declare an interest or;

- They have acted in a manner detrimental to the interests of the Trust, or they have failed to discharge their responsibilities as a Governor and
- 1.20 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor;
 - 1.21 If it comes to the notice of the Trust Secretary that a Governor is ineligible to hold office, The Trust Secretary shall immediately notify the Governor in writing that they are disqualified. Upon receipt of such notification, that Governor's tenure of office, if any, shall be terminated and they shall cease to be a Governor.
 - 1.22 Where a person has been declared disqualified by the Trust Secretary, under the above point, they may appeal against the Trust Secretary's decision to the Chair, whose decision on the matter will be final.
 - 1.23 they have within the last five years been involved as a perpetrator in an incident of violence or intimidation at any of the Trust's hospitals or facilities or against any of the Trust's service users, employees or other persons who exercise functions for the purposes of the Trust, or against any registered volunteer.

b) **Requirement of Governor to notify Trust**

- 1 Where a person has been elected or appointed as a Governor and they become disqualified under paragraph 12 of the Trust's Constitution, they shall notify the Trust Secretary of such disqualification.

c) **Disclosure of interests**

- 1 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and it shall be recorded in a Register of Interests. Any changes in interests should be officially declared at the next Council of Governors meeting following the change occurring.
- 2 Governors are required to inform the Trust Secretary, in writing, within seven days of becoming aware of the existence of a relevant or material interest. The Trust Secretary will amend the Register within seven days.
- 3 Where the Governor has a recorded interest, they
 - 3.1 shall not be present except with the permission of the Council of Governors in any discussion of the matter, and
 - 3.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
 - 3.3 For the avoidance of doubt, the following are regarded as relevant and material interests.

- Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of dormant companies).
 - Ownership, part ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.
 - Majority or controlling shareholding in organisations likely or possibly seeking to do business with the NHS.
 - A position of Authority in a charity or voluntary organisation in the field of health and social care.
 - Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
- 4 To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks
- 5 If Governors have any doubt about the relevance or materiality of an interest, the Chair will take a final decision on the matter.
- 6 The following shall not be treated as material interests:
- an employment contract held by Staff Governors;
 - an employment contract with their CCG held by a CCG Governor ;
 - an employment contract with the University of Nottingham held by a University Governor;
 - an employment contract with an educational establishment held by an Education Governor;
 - an employment contract with the partnership voluntary sector organisation held by the Voluntary Services Governor.
- 7 The Council of Governors is to adopt its own Standing Orders for its practice and procedure, in particular for its procedure at meetings.
- 8 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 that they are a member of a public constituency and are not prevented from being a member of the Council of Governors. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected Governors.

d) Termination of office and removal of Governor

- 1 A Governor shall immediately cease to do so if
- 1.1 they resign by notice in writing to the Trust Secretary;
- 1.2 they are disqualified under Paragraph 12 of the Constitution.
- 1.3 they fail to attend three consecutive meetings or three meetings in any Financial Year, unless the Council of Governors is satisfied that:
- the absences were due to reasonable causes; and
 - they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
- 1.4 A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that;
- they have committed a serious breach of the Code of Conduct; or
- they have acted in a manner detrimental to the interests of the trust; and
- the Council of Governors considers that it is not in the best interests of the trust for them to continue as a Governor.

e) Terms of office

Listed in Paragraph 11 of the Trust's Constitution.

f) Vacancies amongst Governors

- 1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 1.1 Where the vacancy arises amongst the appointed Governors, the Trust Secretary shall request that the appointing organisations appoint a replacement to hold office for the remainder of the term of office.
- 1.2 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty:
- 1.3 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will vacate.
- 1.4 if no-one is available to take office under the preceding sub-paragraph, the seat will remain vacant until the next scheduled election, unless there is no

longer a majority of Governors on the Council of Governors from the public constituencies.

- 1.5 if, as a result of the vacancy, there is no longer a majority of Public Governors and providing that the outstanding period of office is three months or more, to call an election within three months to fill the seat for the remainder of that term of office.

g) Roles and responsibilities

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

1. Develop the Membership of the Trust and represent the interests of Members and partner organisations in the local health economy in the area of the Trust.
2. provide their views to the Board of Directors when the Board of Directors is preparing the Annual Forward Plan document to be given to the Independent Regulator .
3. respond as appropriate when consulted by the Board of Directors in accordance with this Constitution.
4. appoint or remove the Chair and the other Non-Executive Directors in accordance with paragraph 20 of the Trust's Constitution.
- 4a on recommendation of the Trust Chair, appoint one of the Non-Executive Directors to be Vice Chair of the Trust in accordance with paragraph 21 of the Trust's Constitution.
5. decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and Non-Executive Directors in accordance with paragraph 26 of the Trust's Constitution.
6. approve an appointment (by the Non-Executive Directors) of the Chief Executive in accordance with paragraph 22 of the Trust's Constitution;
7. appoint or remove the Trust's external auditor;
8. be presented with the annual accounts, any report of the external financial auditor on them and the annual report.
- 9.. approve amendments to the Constitution in accordance with Paragraph 37;
10. approve applications for a merger, acquisition, separation or dissolution of the Trust, in accordance with Paragraph 39 of this Constitution.
11. approve the Trust entering into a significant transaction, in accordance with Paragraph 39 of this Constitution.

12. undertake such functions as the Board of Directors shall from time to time request.
13. prepare and from time to time to review the Trust's Membership Development Strategy and the role and composition of the Council of Governors.
14. endorse the appointment (made by the Board of Directors) of the Senior Independent Director as described in Paragraph 18.6.
15. Where the Trust proposes to carry on an activity other than the provision of goods and services for the provision of the health service in England, the Council of Governors must:
 - i) determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its functions, and;
 - ii) notify the directors of the Trust of its determination.
16. Where 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. The proposal may only be implemented if more than half of the members of the Council of Governors of the Trust present and voting at a general meeting approve its implementation.
17. 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. For the avoidance of doubt, Paragraph 18 of the Trust's Constitution requires Governors to recognise the Council of Governors has no managerial role within the Trust.
19. The general duties of the governors are:
 - to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors and;
 - to represent the interests of the members of the Trust as a whole and the interests of the public.
- h) **Appointment and removal of Non-Executive Director (including Chair and Vice Chair)**
 1. Appointment

- 1.1 Non-Executive Directors (including the Chair) are to be appointed by the Council of Governors using the following procedure:
- 1.2 The Board of Directors will identify the balance of individual skills, experience and knowledge it requires at the time a vacancy arises for the Non-Executive Directors (including the Chair). They will draw up a job description person specification for each new appointment.
- 1.3 Appropriate candidates will be identified by a Nominations Committee through a process of open competition, which will present a shortlist of potential candidates for consideration by the Appointments and Remuneration Committee appointed by the Council of Governors.
- 1.4 The Nominations Committee will comprise of the Chair (or Vice- Chair, unless they are standing for appointment, in which case another Non-Executive Director when a Chair is being appointed) and two Governors from the Appointments and Remuneration Committee (one staff, one public). The Chief Executive shall be entitled to attend and speak at the meetings of the Nominations Committee and the Committee shall take into account the Chief Executive's views.
- 1.5 The Council of Governors' Appointments and Remuneration Committee will have responsibility for handling all further aspects of the recruitment process. When interviewing, the Appointments and Remuneration Committee will include the Chief Executive, the Chair, or the Vice Chair, if the Chair cannot attend the meeting or is standing for appointment, unless the Vice Chair is standing for appointment, in which case another Non-Executive Director. An external assessor can attend to provide advice only.
- 1.6 The Appointments and Remuneration Committee will select a short list of candidates and will make recommendations to the Council of Governors who shall appoint the Non-Executive Directors. The Council of Governors shall not appoint any candidate not shortlisted or recommended by the Appointments and Remuneration Committee.
- 1.7 Any re-appointment of a Non-Executive Director shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.

2. Removal

- 2.1 The Chair and Non-Executive Directors may be removed from office, on the basis of any of the following grounds (subject to the procedures described in paragraph 2.2 below):
 - It is no longer in the interests of the NHS for the appointment to continue;

- Non-attendance at meetings for a period of three months unless the absence was due to reasonable causes and they have given a written assurance to the Chair (or the Senior Independent Director if it is the Chair not attending meetings), that within a reasonable period of time, having regard to the reasons for non-attendance, they will be able to resume attending meetings;
- If they fail to comply with the requirements of this Constitution in relation to the timely disclosure and declaration of relevant pecuniary and other interests which are or should be the subject of a record in the Register of Interests of Directors or otherwise in relation to matters and discussion at meetings of the Trust;
- If any annual appraisal or sequence of appraisals is unsatisfactory;
- If they no longer enjoy the confidence of the Board of Directors;
- If they lose the confidence of the Council of Governors or the local community which the Trust serves;
- If they act or conduct themselves in such a manner so as to substantially damage the reputation of; the Trust, its employees or other persons it engages; and /or the services it performs or delivers;
- If the Chair consistently fails to ensure that the Board of Directors monitors the performance of the Trust in a manner which discharges its principal purpose as defined by this Constitution, and which is compliant and consistent with the standard of monitoring expected by the Independent Regulator;
- If they consistently fail to deliver work against pre-agreed targets incorporated within their annual objectives;
- If there is an irretrievable breakdown in those working relationships which are necessary and fundamental to the discharge of the Trust's principal purpose, its functions and services, namely, between the Chair and the Chief Executive or between the Non-Executive Director and the rest of the Board of Directors;

2.2 Non-Executive Directors (including the Chair) are to be removed by the Council of Governors using the following procedure.

2.2.1 A motion to remove the Chair or Non-Executive Director (such a person in either case is referred to in this paragraph as the "Reviewee"), must be proposed by a Governor (" the proposing Governor") supported by no less than 2 other Governors. The Governor shall first send a notice in writing of their intention to submit a motion of removal (to a general meeting of the Council of Governors) , which notice shall describe the proposed grounds for removal, together with any supporting evidence to the Chair and the Trust

Secretary , or if the notice refers to proposed motion of removal in relation to the Chair, to the Senior Independent Director, (such a person in either case is referred to in this paragraph as the “Investigator”) and the Trust Secretary. The notice shall be marked “private and confidential” and shall be treated as confidential. no motion for removal shall be made without the matter first being the subject of the dispute resolution procedure set out in section j) to this annex.

2.2.2 The Investigator shall first carry out a preliminary review of the case. If the Investigator concludes there is no case to answer, the matter shall go no further, he shall advise the proposing Governor of his decision and the notice and any proposal to submit a motion of removal shall be deemed to have been withdrawn. If the Investigator concludes that there is a case to answer, they will:

- notify the Reviewee of the proposal,
- the proposed grounds for removal,
- shall refer to the Reviewee any supporting evidence, and
- shall invite the Reviewee to respond to the proposal and the grounds for removal.

The Investigator shall then conduct an investigation. In order to assist the investigation or avoid risk to the Trust the Investigator may suspend the Reviewee. During any period of suspension, the Reviewee may not attend any premises of the Trust or contact any member of the Trust’s staff without permission from the Investigator.

2.2.3 If on the basis of their investigation the Investigator, acting reasonably, determines that there is no case to answer, he shall advise the proposing Governor of the outcome of his investigation, his decision and reasons for the same. The notice and any proposal to remove shall be deemed to have been withdrawn. No motion to remove the Reviewee may be thereafter proposed or submitted to the Council of Governors in those terms.

2.2.4 If the Investigator concludes that there is a case to answer, they shall notify the Reviewee and the proposing Governor of that fact and of their recommendation (if any). The proposing Governor shall then submit a notice of motion to remove the Reviewee to the Trust Secretary and the Chair (or if the Chair is the subject of the notice of motion the Vice Chair).

2.2.5 The Trust Secretary shall convene a general meeting of the Council of Governors at which the motion shall be put, which meeting shall be held no less than 28 clear days from the date of which the Investigator notifies the Reviewee and the proposing Governor that in their opinion there is a case to answer.

- 2.2.6 The Reviewee shall have the right to prepare a written response to the notice of motion. Any written response including any evidence in support shall be sent to the Trust Secretary who shall send copies of the same by registered post to all members of the Council of Governors no less than 7 clear days in advance of the meeting.
- 2.2.7 The Reviewee shall have the right to be represented at the meeting and to address the Council of Governors in relation to the motion proposing their removal; to hear and respond to the case against them and to otherwise address the Council of Governors on such matters that are relevant to their consideration of the notice of motion before them at the general meeting convened for that purpose.
- 2.2.8 The Reviewee shall not be entitled to attend during the final deliberations of the Council of Governors nor may he or she participate in any vote on the matter.
- 2.2.9 The Reviewee will be notified of the Council of Governors decision in writing within 5 clear days of the meeting, which decision shall include number of votes cast in favour of the motion, the number of votes cast against the decision, the grounds relied upon and the reasons for any removal or non-removal, as the case maybe..
- 2.3 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the entire Council of Governors voting in person or by proxy at a properly constituted general meeting of the Council of Governors in accordance with paragraph 20 of this Constitution.
- 2.4 Notwithstanding the case before them, prior to making any decision to remove a Non-Executive Director, the Council of Governors shall have regard to the annual appraisal of the Reviewee. The Trust Secretary shall make the same available to each member of the Council of Governors no less than 7 clear days before the meeting.
- 2.5 If any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further motion can be put forward to remove such Non-Executive Director based upon the same grounds within 12 months of the meeting.

i) Remuneration of Chair and other Non-Executive Directors

The Council of Governors at a general meeting shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors, upon recommendation of its Appointments and Remuneration Committee.

j) Dispute Resolution between the Council of Governors and the Board of Directors

The Chair, or Senior Independent Director (if the dispute involves the Chair) shall endeavour through discussion with Governors and Directors to achieve the earliest possible conclusion, appropriate representatives of them will be invited to resolve the matter to the reasonable satisfaction of both parties.

k) Nominated Lead Governor

The Council of Governors shall appoint a Lead Governor in line with a process and conditions agreed by the Council of Governors;

i) Performance Evaluation

The Chairman, with the assistance of the Trust Secretary, shall lead annually, an assessment of the collective performance of the Council. This process will act as the basis for determining the Governor Development and Training Programme.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

a) Procedures for Meetings

1. The Council of Governors is to meet at least three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give at least 7 days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be given in published formats and locations agreed from time to time by the Council of Governors.
2. Council of Governors meetings will normally be held on weekday evenings. Meetings shall normally commence at 5.00 pm and finish not later than 8.00 pm.
3. Meetings of the Council of Governors may also be called by the Trust Secretary or by the Chair or by 10 Governors 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 10 but not more than 28 days' notice to discuss the specified business. If the Trust Secretary fails to call such a meeting then the Chair or Governors, whichever is the case, shall call such a meeting.
4. Notwithstanding the above requirement for notice in Paragraphs 1 and 3, the Chair may waive notice on written receipt of the agreement of the majority of Governors.
5. A Governor desiring a matter to be included on the agenda shall make his request in writing to the Trust Secretary at least 14 days before the meeting. Requests made less than 14 days before a meeting may be included on the agenda at the discretion of the Chair.
6. All meetings of the Council of Governors are to be General Meetings 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 on other proper grounds. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 6a Nothing in these Standing Orders shall require the Council to allow members of the public or press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceeding as they take place without the prior agreement of the Council of Governors

7. - 14 Governors, including not less than 9 Public Governors, not less than 4 Staff Governors and not less than 1 Appointed Governors shall form a quorum.
8. The Chair of the Trust is not a member of the Council of Governors but under the Regulatory Framework the Chair of the Trust or, in their absence, the Vice Chair of the Trust is to preside over meetings of the Council of Governors. The Vice Chair of the Trust will attend meetings of the Council of Governors as an observer to maintain continuity.
9. The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the Trust's external auditors or other advisors to attend a meeting of the Council of Governors, with the approval of the Chair.
10. The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link in exceptional circumstances. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting
11. The Council of Governors will appoint one of its number to act as the Nominated Lead Governor whose role shall include that of Acting Chair of the Council. The Acting Chair will preside over the Council of Governors where the Chair or Vice Chair is absent or when issues concerning the Chair and/or the Non-Executive Directors are considered. If the Lead Governor is not present, another Governor as the Governors present, choose to preside.
12. Motions may only be submitted by the Chair or by a Governor and must be received by the Trust Secretary in writing at least 14 days prior to the meeting at which they are to be considered. Motions should be seconded.
13. Emergency motions may only be submitted by a Governor and must be received by the Trust Secretary before the commencement of the meeting. Acceptance of such motions for inclusion on the agenda will be at the discretion of the Chair.
14. Any other business should be notified to the Chair at the commencement of the meeting. Acceptance of such items of business for inclusion on the agenda will be at the discretion of the Chair.
15. Any Governor may move an amendment to a motion that does not directly negate the original motion. No further amendments may be moved until the first amendment is disposed of. If an amendment is passed, it shall become part of the substantive motion and subject to further amendment.
16. As a guide, a mover of a motion under Standing Orders 12 and 13 shall have a maximum of 10 minutes to move and 5 minutes to reply. Once a motion has

been moved, no Governor shall speak more than once or for more than 5 minutes. All of these timings may be modified by agreement of the Chair.

17. Approvals or questions arising at a meeting of the Council of Governors shall generally be decided by a majority of votes unless prescribed otherwise in this Constitution. In the case of an equality of votes, the Acting Chair of the Council of Governors shall have a second and casting vote, this may require the Trust Chair or Vice Chair to vacate the Chair until the tied vote has been cast.
18. No resolution of the Council of Governors shall be passed if all the Public Governors present unanimously oppose it.
19. The Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the entire Council of Governors voting in person or by proxy at a properly constituted general meeting of the Council of Governors in accordance with paragraph 20 of this Constitution.
20. Governors who are unable to attend the Council of Governors meeting should advise the Trust Secretary in advance of the meeting so that their apologies may be submitted.
21. Except where this would contravene any statutory provision or guidance issued by the Independent any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of Governors are present and that a majority of those present vote in favour of suspension.
22. A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
23. The Trust's Audit Committee shall review every decision to suspend Standing Orders.

b) **Committees**

24. The Council of Governors may appoint committees consisting of its members, Directors, and other persons to assist the Council in carrying out its functions.
25. The Council of Governors may, through the Trust Secretary, request that advisors assist them or any committee they appoint in carrying out their functions.
26. All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.
27. All Governors shall comply with the Code of Conduct, as agreed by the Board of Directors and the Council of Governors.

c) **Confidentiality**

28. A Governor of the Trust or a member of a Committee shall not disclose any matter reported to the Council or otherwise dealt with by the Committee, if the Council or Committee shall resolve that it is confidential.
29. A member of a Committee shall not disclose a matter dealt with by, or brought before, the Committee without its permission until the Committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

FOREWORD

Within the Terms of Authorisation issued by Monitor and subsequent licence issued by the Independent Regulator, NHS Foundation Trusts are required to demonstrate the existence of appropriate arrangements to provide comprehensive governance arrangements in accordance with the National Health Service Act 2006, as amended.

As part of acceptable corporate governance arrangements, NHS Foundation Trusts need to agree Standing Orders (SOs) for the regulation of their proceedings and business.

In addition, as part of accepted Codes of Conduct and Accountability arrangements, Boards are expected to adopt schedules of reservation of powers and delegation of powers. These schedules are incorporated within the Reservation of Powers to The Board and Delegation of Powers (known as the Scheme of Delegation).

These documents, together with Standing Financial Instructions, Detailed Scheme of Delegation and key governance policies including those covering Budgetary Control, Fraud and Corruption and Conflicts of Interests provide a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less than properly.

The Standing Orders, Scheme of Delegation, Standing Financial Instructions and Trust Policies provide a comprehensive business framework that are to be applied to all (including Charitable Funds) activities. All Executive and Non-Executive Directors and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

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INTRODUCTION

Statutory Framework

The Trust is a statutory body, which came into existence on 1st July 2004 as Derby Hospitals NHS Foundation Trust pursuant to authorisation of Monitor under the Health and Social Care (Community Health and Standards) Act 2003 ("the 2003 Act") which has now been re-enacted by the National Health Service Act 2006. The name of the Trust was changed to Derby Teaching Hospitals NHS Foundation Trust on 1 April 2015 and then to University Hospitals of Derby and Burton NHS Foundation Trust on merger via acquisition of Burton Hospitals NHS Foundation Trust on 1 July 2018.

For administrative purposes, the Royal Derby Hospital, Uttoxeter Road, Derby, DE22 3NE is recognised as the Trust Headquarters.

NHS Foundation Trusts are governed by Act of Parliament, mainly the National Health Service Act 2006 as amended.

The functions of the Trust are conferred by this legislation and the Provider Licence issued by the Independent Regulator. As a statutory body, the Trust has specified powers to contract in its own name and act as a corporate trustee.

Conduct of Business

The Board of Directors will conduct business in as open way as possible and will:

- Observe the Nolan Principles of Public Life of selflessness, integrity, objectivity, accountability, openness, honesty and leadership;
- At all times seek to comply with the NHS Foundation Trust Code of Governance ; and
- At all times seek to comply with the UK Corporate Governance Code 2016

Delegation of Powers

The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements.

Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO4) the Trust may make arrangements for the exercise, on behalf of the Board of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit or in accordance with the Constitution and the terms of the Authorisation.

Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers).

1. INTERPRETATION

1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive or Trust Secretary.)

1.2 Any expression to which a meaning is given in National Health Service Act 2006 and other Acts relating to the National Health Service or in the Financial or other Regulations made under the Acts or in the Authorisation or Constitution shall have the same meaning in this interpretation and in addition:

“2006 Act” means the National Health Service Act 2006

"ACCOUNTING OFFICER" means the officer responsible and accountable for funds entrusted to the Trust. He/she shall be responsible for ensuring the proper stewardship of public funds and assets. In accordance with the Act, this shall be the Chief Executive.

"AUTHORISATION" means the authorisation of the Trust by Independent Regulator.

"BOARD" means the Board of Directors, constituted in accordance with the Trust's Constitution and acting collectively as a body.

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

"CHAIR" is the Chair of the Trust and the person appointed in accordance with the Constitution to lead the Council of Governors and the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chair" shall be deemed to include the Vice-Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable. The term Chairman is given the same interpretation.

"CHIEF EXECUTIVE" means the chief officer of the Trust.

"COMMISSIONING" means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

"COMMITTEE" means a committee created and appointed by the Board.

"COMMITTEE MEMBERS" means persons formally appointed by the Board to sit on or to chair specific committees.

"CONSTITUTION" means the constitution of the Trust as approved by the Board and the Council of Governors.

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

"DIRECTOR" *MEANS* an Executive or Non-Executive Director.

"DIRECTOR OF FINANCE" means the Director of Finance who is the chief finance officer of the Trust.

"EXECUTIVE DIRECTOR" means a director who is an officer of the Trust appointed in accordance with the Constitution. For the purposes of this document, "Director" shall not include an employee whose job title incorporates the word Director but who has not been appointed in this manner.

"FUNDS HELD ON TRUST" shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by Statutory Instrument, or chooses subsequently to accept under powers derived under the 2006 Act. Such funds may or may not be charitable.

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

" INDEPENDENT REGULATOR" means the body corporate formerly known as Monitor and now known as NHS Improvement, as provided by section 61 of the 2012 Act;

"NOMINATED OFFICER" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

"NON-EXECUTIVE DIRECTOR" means a director who is not an officer of the Trust and who has been appointed in accordance with the Constitution. This includes the Chair of the Trust.

"OFFICER" means employee of the Trust or any other person holding a paid appointment or office within the Trust.

"PECUNIARY INTEREST" *MEANS* any interest capable of being measured in terms of a potential financial gain.

"SFIs" means Standing Financial Instructions.

"SOS" means Standing Orders.

"TRUST" means the University Hospitals of Derby and Burton NHS Foundation Trust.

"VICE-CHAIR" means the Non-Executive Director appointed on recommendation of the Chair by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason or declares an interest.

2. THE BOARD OF DIRECTORS

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

2.2 The powers of the Trust established under statute shall be exercised by the Board of Directors meeting in public session except as otherwise provided for in Standing Order 4 and in cases where the Board resolves that the public and press are to withdraw from a meeting as provided for in Standing Order 3.

2.3 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission.

2.4 The Board has resolved that certain powers and decisions are reserved for the Board. These powers and decisions are set out in the Reservations of Powers to the Board and Delegation of Power and have effect as if incorporated into the Standing Orders.

2.4.1 The Board will function as a corporate decision-making body, Executive Directors and Non-Executive Directors will be full and equal members. Their role as members of the Board will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

2.5 Composition of the Trust Board

The composition of the Board of the Directors will be in accordance with Paragraph 19 of the Trust's Constitution.

2.6 Appointment of Directors

The Chair and Non-Executive Directors are appointed by the Council of Governors in line with the procedures set out in Paragraphs 20, 26 and Annex 5 of the Trust's Constitution.

2.6.1 The Executive Directors are appointed in line with the procedures set out in Paragraph 22 of the Trust's Constitution.

2.7 Terms of Office of the Chair and Non-Executive Directors

The Chair and the Non-Executive Directors are to be appointed by the Council of Governors at a General Meeting. The Council of Governors will also decide

the terms of office, remuneration and other terms and conditions of the Chair and Non-Executive Directors at a General meeting.

2.8 Appointment of Vice Chair

For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors, on recommendation of the Trust Chair, may appoint a Non-Executive Director to be Vice Chair for such a period, not exceeding the remainder of his/her term as Non-Executive Director of the Trust, as they may specify on appointing him/her.

2.9 Any Non-Executive Director so elected may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair and the Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chair in accordance with paragraph 2.8.

2.10 Powers of Vice Chair

If the Chair is unable to discharge their office as Chair, the Vice Chair shall be acting Chair of the Trust.

2.11 Joint Executive Directors

Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of Standing Order 2.5 as one person.

3. MEETINGS OF THE BOARD OF DIRECTORS

3.1 Admission of the Public and the Press

The Board will designate a number of its meetings as Public Board meetings. Other Board meetings will be designated as Confidential Board meetings and will not be open to the public or representatives of the press.

Public meetings of the Board will be open to the public and representatives of the press. The public and representatives of the press will be required to withdraw from a meeting where the Board resolves as follows: -

“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest” (Section 1(2) Public Bodies (Admission to Meetings) Act 1960) .

3.2 The Chair (or Vice-Chair) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board’s business shall be

conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public” (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).

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

3.4 Calling Meetings

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

- 3.5** Meetings of the Board are called by the Trust Secretary, or by the Chair, or by 4 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. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall call a meeting on at least fourteen but not more than twenty-eight calendar days' notice to discuss the specified business. If the Trust Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting.

3.6 Notice of Meetings

In addition to the notice of the meeting being delivered electronically to every director, or sent by post to the usual place of residence of such director, notice will also be published on the Trust's website.

- 3.7** Lack of service of the notice on any one director shall not affect the validity of a meeting. Failure to serve such a notice on more than three directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or alternatively when sent electronically to a valid email address.
- 3.8** No business shall be transacted at the meeting other than that specified in the notice. Emergency Motions, which do not relate to items on the agenda but have arisen in the period after the deadline for providing notice of motions and cannot wait until the next meeting will be allowed at the discretion of the Chair.
- 3.9** Agendas will be sent to directors 6 calendar days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will

certainly be despatched no later than 3 clear days before the meeting, save in emergency.

- 3.10** Before each public board meeting a public notice of the time and place of the meeting, and the public part of the agenda, shall be published on the Trust's web-site at least three clear days before the meeting.

3.11 Setting the Agenda

The Board may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted as agreed by the Board. Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.

- 3.12** A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Trust Secretary at least 10 calendar days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

3.13 Chair of Meeting

At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting the Vice-Chair, if he/she is present, shall preside. If the Chair and Vice-Chair are absent, a chair will be appointed from those Non-Executive Directors present by the Directors, for the duration of the meeting.

- 3.14** If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice-Chair, if present, shall preside. If the Chair and Vice-Chair are absent, or are disqualified from participating, a chair will be appointed for that element of the meeting as in 3.13 above.

3.15 Notices of Motion

A Director desiring to move or amend a motion shall send a written notice thereof at least 10 calendar days before the meeting to the Trust Secretary, who shall then inform the Chair and shall insert in the agenda for the meeting all notices so received subject to notices being permissible under governing regulations. This paragraph shall not prevent any motion being moved during the meeting without notice, on any business mentioned on the agenda.

3.16 Withdrawal of Motion or Amendments

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

3.17 Motion to Rescind a Resolution

Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of five directors. When any such motion has been disposed of by the Trust, no director other than the Chair may propose a motion to the same effect within 6 months.

3.18 Motions

The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto. All motions shall be proposed and seconded.

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

- An amendment to the motion;
- The adjournment of the discussion or the meeting;
- That the meeting proceed to the next business*;
- The appointment of an ad hoc committee to deal with a specific item of business;
- That the motion be now put*; or
- A motion under Section 1 (2) of the Public Bodies Admission to Meetings) Act 1960 resolving to exclude the public (including the press).

In the case of sub-paragraphs denoted by (*) above, to ensure objectivity, motions may only be put by a director who has not previously taken part in the debate.

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 original motion.

Amendments must be proposed and seconded before they are discussed and must be relevant to the original motion.

Amendments should be dealt with one at a time and if agreed the amendment becomes the substantive motion which can then be further amended.

3.20 Chair's Ruling

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

3.21 Voting

Every question put to a vote shall be determined by a majority of those present. In the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.

3.22 All questions 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.

3.23 If at least four 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.

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

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

3.26 An officer who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

3.27 Minutes

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

3.28 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.

3.29 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

3.30 Joint Directors

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

- (a) Both persons shall be entitled to attend or take part in meetings of the Board;
- (b) Either of those persons, if present, shall be eligible to cast one vote in the case of agreement between them;
- (c) In the case of disagreement between them no vote should be cast; and
- (d) The presence of either or both of those persons shall count as one person for the purposes of SO 3.38 [Quorum].

3.31 Suspension of Standing Orders

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

3.32 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

3.33 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the directors.

3.34 No formal business may be transacted while Standing Orders are suspended.

3.35 The Audit Committee shall review every decision to suspend Standing Orders.

3.36 Variation and Amendment of Standing Orders

Standing Orders shall form an annex to the Trust's Constitution and any amendments thereto shall follow the procedures outlined in paragraph 37 of the Constitution.

3.37 Record of Attendance

The names of the Chair and Directors present at the meeting shall be recorded in the minutes.

3.38 Quorum

No business shall be transacted at a meeting of the Trust unless at least four Members of the whole number of the directors are present at least two Executive

Directors and two Non-Executive Directors.

3.39 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.40 If the Chair or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 6 or 7) 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. The above requirement for at least two Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the recommendations of the Nomination and Remuneration Committee).

3.41 Observers at Trust meetings

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

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

The Board has resolved that certain powers and decisions may only be exercised by the Board. These are set out in the Schedule of Decisions Reserved to the Board contained within the Reservation of Powers to the Board and Delegation of Powers.

4.1 Subject to a provision in the Authorisation/Licence or the Constitution, the Board may make arrangements for the exercise, on behalf of the Board, of its functions

- by a committee or sub-committee appointed by virtue of SO 5.1 or 5.2 below; or
- by a director or an officer of the Trust

in each case subject to such restrictions and conditions as the Board thinks fit. Details of the delegations are set out in the Detailed Scheme of Delegation.

The arrangements made by the Board as set out in Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated in these Standing Orders.

4.2 Emergency Powers

The powers which the Board has retained for itself within these Standing Orders (SO 2.4) may in an 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 in public session, for ratification.

4.3 Delegation to Committees

The Board shall agree, as and when it deems appropriate, for 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.

4.5 Delegation to Officers

Those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive or other officers. The Chief Executive shall suggest to the Board which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Trust.

4.6 The Chief Executive shall prepare a Detailed Scheme of Delegation identifying his/her proposals, which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendments to the Detailed Scheme of Delegation, which shall be considered and approved by the Board as indicated above.

4.7 Nothing in the Detailed Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance or other Executive Directors to provide information and advise the Board in accordance with any statutory requirements. Outside these statutory requirements the Director of Finance shall be accountable to the Chief Executive for operational matters.

4.8 The arrangements made by the Board as set out in the Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated in these Standing Orders.

4.9 Non-Compliance with Standing Orders

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

and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

5. COMMITTEES

5.1 Appointment of Committees

5.1 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Trust. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “director” is to be read as a reference to a member of the committee also as the context permits. There is no requirement to hold meetings of committees established by the Trust in public.

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

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

5.4 A committee appointed under SO5.1 may, subject to such guidance as may be given by the Independent Regulator or the Board, appoint sub-committees consisting wholly or partly of members of the committee (but may only include Directors of the Trust).

5.5 The Board shall approve the appointments to each of the committees, which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither directors nor officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board as defined by the Authorisation and Constitution. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with its Constitution.

5.6 The committees and sub-committees established by the Trust are:

Audit Committee

Finance, Investment and Performance Committee

Nominations and Remuneration Committee

Quality Committee

People Committee

Charitable Funds Committee

Such other committees may be established, as required, to discharge the Board's responsibilities.

5.7 Confidentiality

There must be a sensible approach adopted whilst dealing with matters of a confidential nature. Patient confidentiality is governed by the Trusts' relevant policies and therefore references to confidentiality in this section of Standing Orders, applies to issues of a more general and commercial nature.

5.8 Members of the Board of Directors and members of any Committee established by the Board of Directors have a duty to maintain confidentiality in respect of the subject matter discussed at Board and Committee meetings. This is particularly important where proposals are agreed at Committee level which requires the Board of Directors to approve or to make a decision. In such circumstances, members of that committee are expected to maintain confidentiality among themselves regarding the said subject; until such time that the Board of Directors has taken the necessary action.

5.9 From the practical perspective it is not unreasonable for members of committees to discuss such matters among themselves. Similarly, Board Members would be expected to discuss among themselves such issues referred to the Board. However, confidentiality must be maintained within that forum and not with other members of staff outside the Board or Committee meeting.

5.10 Any confidential matters contained within agenda papers for meetings of the Board of Directors or Board Committees must remain confidential to the members of the Board or Committee members. The only exceptions to this will be the Trust's Internal and External Auditors, who are entitled to receive any confidential papers, and members of the public who receive copies of the public Board agenda and papers.

6. DECLARATIONS OF INTERESTS

6.1 Declaration of Interests

The Constitution requires directors to declare interests, which are relevant and material to the Board. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment. Advice on interests should be sought from the Trust Secretary.

6.2 Interests, which should be regarded as "relevant and material", are:

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- b) Ownership or part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- d) A position of authority in a charity or voluntary organisation in the field of health and social care;
- e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; and
- f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

6.3 Any changes in interests should be officially declared at the next Board meeting following the change occurring. At the time directors' interests are declared, they should be recorded in the Board of directors' minutes.

6.4 Directors' directorships of organisations referred to in 6.2.a or 6.2.b above which are likely or possibly seeking to do business with the NHS should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.5 During the course of a Board meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes not voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, a majority vote will resolve the issue with the Chair having the casting vote.

6.6 There is no requirement in the Code of Accountability for the interests of directors' spouses or partners to be declared.

6.7 If directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

6.8 **Register of Interests**

The details of directors' and governors' interests recorded in the Register will be kept up to date by means of a monthly review of the Register by the Trust

Secretary to the Board, during which any changes of interests declared during the preceding month will be incorporated.

- 6.9** Subject to contrary regulations being passed, the Register will be available for inspection by the public free of charge. The Chair 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. Copies or extracts of the Register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register.
- 6.9.1** Directors are required to inform the Trust Secretary, in writing, within 7 days of becoming aware of the existence of a relevant or material interest.

7. EXCLUSION OF CHAIR AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1** Subject to the following provisions of this Standing Order, if the Chair or a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2** The Board may exclude the Chair or a Director of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.
- 7.3** Any remuneration, compensation or allowances payable to the Chair or a Non-Executive director in accordance with the Constitution shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4** For the purpose of this Standing Order the Chair or a director shall be treated, subject to SO 7.2 and SO 7.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) They , or their nominee , is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
 - or
 - (b) they are a business partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other. This includes Co-habitees and Civil Partners

7.5 The Chair or a director shall not be treated as having a pecuniary interest in any, proposed contract or other matter by reason only:

- (a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body; or
- (b) of an interest in any company, body or person with which he/she is connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Chair or a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.6 Where the Chair or a director:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;

This Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

7.7 This Standing Order applies to a committee or sub-committee as it applies to the Board and applies to any member of any such committee or sub-committee (whether or not he/she is also a director of the Trust) as it applies to a director.

8. STANDARDS OF BUSINESS CONDUCT

8.1 Policy

Staff must comply with the Trust Policy for the Management of Conflicts of Interest and other Trust policies listed in and to be considered alongside the

above policy.

8.2 Interest of Officers in Contracts

If it comes to the knowledge of an Executive Director or an Officer of the Trust that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, declare the interest in line with the Trust Policy for the Management of Conflicts of Interest. If the Chief Executive has a pecuniary interest he/she must also declare it to the Chair. In the case of married persons, civil partners or co-habiting partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 8.3** An officer must also declare any other employment or business or other relationship of his/hers, or of a spouse, civil partner or cohabiting partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared by staff to be entered in a register of interests. Where the Chief Executive has any such interests these must be declared to the Chair.

8.4 Canvassing of, and Recommendations by, Directors in Relation to Appointments

Canvassing of Directors or of the Board or members of any committee of the Board directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

- 8.5** A Director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a director from giving a written testimonial of a candidate's ability, experience or character for submission to the Trust or taking part in the appointment process.

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

8.7 Relatives of Directors or Officers

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

- 8.8** The Chair, Directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made. Relationships to which this order applies are those of

husband and wife or co-habitees or where the candidate is, or is the spouse of, the son, daughter, grandson, granddaughter, brother, sister, nephew or niece of the chair, director or officer.

- 8.9** On appointment, Directors (and prior to acceptance of an appointment in the case of executive directors) should disclose to the Board whether they are related to any other Director or holder of any office under the Trust.
- 8.10** Where the relationship of an officer or another Director to a Director of the Trust is disclosed, the Standing Order headed “Exclusion of the Chair and Directors in proceedings on account of pecuniary interest” (SO 7) shall apply.

Hospitality

- 8.11** Any Board member or member of staff who receives or is offered and declines hospitality in excess of £25 is required to declare in line with the Trust Policy for the Management of Conflicts of Interest.

9. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

9.1 Custody of Seal

The Common Seal of the Trust shall be kept by the Trust Secretary, or officer appointed by him/her, in a secure place.

9.2 Sealing of Documents

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

- 9.3** Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him/her) and authorised and countersigned by either the Chief Executive or the Trust Secretary. The Chief Executive, Director of Finance and Information and the Trust Secretary have delegated authority to affix the Trust Seal. The use of the Trust Seal is reported to the Board

9.4 Register of Sealing

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

10. SIGNATURE OF DOCUMENTS

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

11. MISCELLANEOUS

11.1 Standing Orders to be given to Directors and Officers

It is the duty of the Chief Executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions (SFIs). Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.

11.2 Documents having the standing of Standing Orders

Standing Financial Instructions, Reservation of Powers to the Board and Delegation of Powers and the Budgetary Control Policy shall have effect as if incorporated into Standing Orders.

11.3 Review of Standing Orders

- 11.3.1 Standing Orders shall be reviewed at least annually by the Board. The requirement for review extends to all documents having effect as if incorporated in Standing Orders.
- 11.3.2 Standing Orders shall form an annex to the Trust's Constitution and any amendments thereto shall follow the procedures outlined in paragraph 37 of the Constitution.

ANNEX 8 – FURTHER PROVISIONS IN RELATION TO MEMBERSHIP

Representative membership

1. 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:
 - 1.1 the Trust shall at all times have in place and pursue a Membership Development Strategy which shall be approved by the Council of Governors, and which shall be reviewed by them from time to time, and at least every 3 years,
2. The Council of Governors shall present to each Annual Members' Meeting:
 - 2.1 a report on steps taken to secure that as a whole the actual membership is representative of those eligible for such membership;
 - 2.2 the progress of the Membership Development Strategy;
 - 2.3 any changes to the Membership Development Strategy.

Disqualification from membership

- 3 A person may not be a member of the Trust:
 - 3.1 If, in the opinion of the Council of Governors, there are reasonable grounds to believe that they are likely to act in a way detrimental to the interests of the Trust, or;
 - 3.2 If their name appears on the sex offenders register, or;
 - 3.3 If within the last 5 years they have perpetrated a serious incident or violence towards any of the Trust's hospitals or facilities or against any of the Trust's employees or registered volunteers in association with their employment with the Trust.

Termination of membership

4. A member shall cease to be a member if:
 - they resign by notice to the Trust Secretary;
 - they die;
 - they are disqualified from membership by paragraph 8 of the Trust's Constitution;
 - being a member of a public constituency, they cease to fulfil the requirements of paragraph 6

- being a member of the staff constituency, they cease to fulfil the requirements of paragraph 7;
 - they are expelled under this constitution.
- 4.1 If it appears to the Trust Secretary that they no longer have an interest in the affairs of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they have a continuing interest.
- 4.2 A member may be expelled by a resolution of a majority of the Council of Governors present and voting at a General Meeting. The following procedure is to be adopted:
- 4.3 Any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust.
- 4.3.1 If a complaint is made, the Council of Governors will 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:
- 4.3.1.1 dismiss the complaint and take no further action; or
- 4.3.1.2 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
- 4.5 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.
- 4.6 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.
- 4.7 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 4.8 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 4.9 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of the majority of the Council of Governors present and voting at a General Meeting.

Members' Meetings

- 5 The Trust is to hold a Members' meeting (called the Annual Members' Meeting) within 6 months of the end of each financial year.

- 5.1 All Members' meetings other than Annual Meetings are called Special Members' meetings.

Eligibility to Attend

- 6 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 members of the general 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. Every Member registered by the Trust shall be entitled to attend an Annual Members Meeting, subject to providing proof of membership to the satisfaction of the Trust Secretary or his/her representative.
 - 6.1 All Members' meetings are to be convened by the Trust Secretary by order of the Council of Governors.
 - 6.2 The Council of Governors may decide where a Members' meeting is to be held and may also, for the benefit of members:
 - 6.2.1 arrange for the Annual Members' Meeting to be held in different venues each year.

Agenda

7. At the Annual Members' Meeting, the Council of Governors shall present to the members:
 - 7.1 the annual report and accounts;
 - 7.2 any report of the external auditor;
 - 7.3 forward planning information for the next financial year;
 - 7.4 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies is representative of those eligible for such membership and those using the Trust's services;
 - 7.5 the progress of the Membership Development Strategy;
 - 7.6 any proposed changes to the role and composition of the Council of Governors and of the Non-Executive Directors;
 - 7.7 the results of elections and appointment of Governors.

Notice

8. Notice of a Members' meeting is to be given:
 - 8.1 by notice sent by post, or by electronic mail where the member has provided an email address for service, to all members;
 - 8.2 by notice prominently displayed at the Head Office and at the Trust's principal places of business; and
 - 8.2.1 by notice on the Trust's website.
 - 8.2.2 at least 14 clear days before the date of the meeting. The notice must:
 - be given to the Council of Governors and the Board of Directors, and to the financial auditors;
 - state whether the meeting is an annual or special members' meeting;
 - give the time, date and place of the meeting; and
 - indicate the business to be dealt with at the meeting.
 - 8.2.3 In addition, in order to give members as much advance notice as possible, informal notice of meetings and the timetable for submitting motions and amendments shall be publicised in Members' publications wherever possible.
- 8.3 Before a Members' meeting can do business there must be a quorum present. A Members' meeting may proceed to business if 16 individual members who are entitled to vote at the meeting, are present.
- 8.4 It is the responsibility of the Chair of the meeting, supported by the Secretary to ensure that at any Members' meeting:
 - 8.4.1 the issues to be decided are clearly explained;
 - 8.4.2 sufficient information is provided to members to enable rational discussion to take place;
 - 8.4.3 where appropriate, experts in relevant fields or representatives of special interest groups are invited to address the meeting.

Chair

9. The Chair of the Council of Governors i.e. The Chair of the Trust or in their absence the Vice Chair or in their absence some other Governor present and nominated by the Council of Governors shall Chair all Members' meetings of the Trust. If there is only one Governor present and willing to act they shall be Chair. If no Governor volunteers to act as Chair or if no Governor is present

within fifteen minutes after the time appointed for holding the meeting, the members present shall determine one of their number to be Chair.

Quorum

- 10 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.

Voting

- 11 Subject to this constitution, a resolution put to the vote at a Members' meeting shall, except where a poll is demanded by one tenth of Council of Governors Members and accepted by the Chair, be decided upon by a show of hands.
 - 11.1 On a show of hands or on a poll, every member present is to have one vote. On a poll, votes may be given either personally or by proxy under arrangements laid down by the Council of Governors, and every member is to have one vote.
 - 11.2 Unless a poll is demanded, the result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.
 - 11.3 A poll may be directed by the Chair or demanded either before or immediately after a vote by show of hands by not less than one-tenth of the members present at the meeting. A poll shall be taken immediately.
 - 11.4 The ruling of the Chair on a point of order shall be final.
 - 11.5 The agenda shall set out the business to be conducted at the meeting. No business other than that set out in the agenda shall be considered at a Members' meeting unless specifically agreed by the Chair.
 - 11.6 It is the responsibility of the Council of Governors, the Chair and the Trust Secretary to ensure that at any Members' meeting that the issues to be decided are clearly explained, sufficient information is provided to members to enable rational discussion to take place and, where appropriate, invite experts in relevant fields or representatives of special interest groups to address the meeting.

Speaker

12. Wherever possible, speakers should try to contain their presentation within a 10-minute time slot. The Chair will decide when the appropriate time limit has been reached. No speaker apart from the mover of a motion shall speak more than once on the same question, unless by agreement of the Chair.

Motions

13. Any motion for consideration at any Members' meeting shall be received in writing signed by 5 members submitted to the Trust Secretary at the Trust's registered office by 5.00 pm, 31 days before the meeting. It shall be included in the notices sent out as set out in 8 above.
- 13.1 A motion or amendment should be formally proposed and seconded at the meeting. Any of the signatories may propose or second the motion or amendment at any meeting where it appears on the agenda. In the event of such a member not being available to attend such a meeting, the member may appoint another member to propose or second.

Rejection of Motions and Amendments

- 13.2 Acceptance of motions or amendments shall be at the discretion of the Chair, and may be disqualified if they:
 - 13.21 May result in publicity which could unjustifiably diminish confidence in the Trust, or
 - 13.22 Are defamatory, or
 - 13.23 Concern matters of day-to-day management which lie within the discretion of the management of the Trust Board of Directors, or
 - 13.24 Do not relate directly to the affairs of the Trust, or
 - 13.25 Are in substantially the same terms as a motion that has been considered at a meeting held during the preceding 18 months.
- 13.3 No amendment shall be accepted which is not relevant to the motion and no member shall propose or second more than one amendment to any motion.
- 13.4 In the event of rejection, a member may appeal to the Council of Governors. The Council of Governors may at its discretion submit an amendment for the consideration of members to any motion received.

Scrutineers

- 14 At least two members shall be appointed at the beginning of the meeting to act as scrutineers in the event of any voting.

Resolution

- 15 A resolution of an Annual Members' meeting shall be considered by the Council of Governors and a response provided. The Board of Directors may wish to submit a motion for consideration by the Council of Governors.