
CONSTITUTION OF
WIRRAL UNIVERSITY TEACHING HOSPITAL
NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)

This version of the constitution took effect on 13 June 2013.

Constitution of Wirral University Teaching Hospital

NHS Foundation Trust

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1. **Name**

The name of the foundation trust is Wirral University Teaching Hospital NHS Foundation Trust (“the Foundation Trust”).

2. **Principal purpose**

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

2.2 The Foundation 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 Foundation Trust may provide goods and services for any purpose 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 Foundation Trust may also carry out activities other than those mentioned in the above paragraph for the purpose of making additional income available in order to better to carry out its principal purpose.

3. **Powers**

3.1 The powers of the Foundation Trust are set out in the 2006 Act.

3.2 The powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.

3.3 Any of these powers may be delegated to a committee of Directors or to an executive Director.

4. **Membership and constituencies**

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

4.1 a public constituency; or

4.2 a staff constituency.

Further provisions as to members are set out in Annex 9.

5. **Application for membership**

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

6. **Public Constituency**

6.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Foundation 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 Foundation Trust under a contract of employment with the Foundation Trust may become or continue as a member of the Foundation Trust provided:

7.1.1 He is employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

7.1.2 He has been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.

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

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

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 Foundation Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

8. Restriction on membership

- 8.1 An individual who is a member of a constituency, or of a class within a constituency, may not, while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3 The Company Secretary shall make the final decision about the constituency or class of a constituency of which an individual is eligible to be a member.
- 8.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Foundation Trust are set out in Annex 9.

9. Council of Governors – composition

- 9.1 The Foundation 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 members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

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 Rules for Elections, as may be varied from time to time
- 10.2 The Model Rules for Elections, as may be varied from time to time by the Department of Health, form part of this constitution and are attached at Annex 4.
- 10.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Foundation Trust cannot amend the Model Rules.
- 10.4 An election, if contested, shall be by secret ballot.

11. **Council of Governors - tenure**

- 11.1 Subject to the provisions of Annex 5, an Elected Governor shall normally hold office for a period of 3 years commencing immediately after the Annual Members' meeting at which his election is announced.
- 11.2 An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 11.3 An Elected Governor shall be eligible for re-election at the end of his term.
- 11.4 An Elected Governor may not hold office for more than nine consecutive years, and shall not be eligible for re-election if he has already held office for more than six consecutive years. An Elected Governor who has ceased to hold office in accordance with this paragraph shall, from then on, not be eligible for election.
- 11.5 Subject to the provisions of Annex 5, an appointed Governor shall normally hold office for a period of 3 years commencing immediately after the Annual Members' meeting at which his appointment is announced.
- 11.6 An Appointed Governor shall cease to hold office if the Appointing Organisation which appointed him terminates the appointment.
- 11.7 An Appointed Governor shall be eligible for re-appointment at the end of his term.
- 11.8 An Appointed Governor may not hold office for more than nine consecutive years, and shall not be eligible for re-appointment if he has already held office for more than six consecutive years. An Appointed

Governor who has ceased to hold office in accordance with this paragraph shall, from then on, not be eligible for re-appointment.

- 11.9 For the purposes of these provisions concerning terms of office for Elected and Appointed Governors, “year” means a period commencing immediately after the conclusion of the Annual Members’ meeting, and ending at the conclusion of the next Annual Members’ meeting.

12. **Council of Governors – disqualification and removal**

- 12.1 The following may not become or continue as a member of the Council of Governors:
- 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 Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 12.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 12.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

13. **Council of Governors – general duties**

- 13.1 The general duties of the Council of Governors are –
- 13.1.1 To hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
 - 13.1.2 To represent the interests of the members of the Foundation Trust as a whole and the interest of the public.
- 13.2 The Foundation Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as Governors.

14. **Council of Governors – meetings of Governors**

- 14.1 The Chair of the Foundation Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 below) or, in his absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 23 below) or, in his or her absence, one of the non-executive Directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors (appointed in accordance with the provisions of paragraph 4 of Annex 5) will chair that part of the meeting.
- 14.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.
- 14.3 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.

15. **Council of Governors – standing orders**

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

16. **Council of Governors – referral to the Panel**

- 16.1 In this paragraph, "the Panel" means a panel of persons appointed by Monitor to which a Governor of the Foundation Trust may refer a question as to whether the Foundation Trust has failed or is failing –
- 16.1.1 To act in accordance with its constitution; or
 - 16.1.2 To act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 16.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

17. **Council of Governors - conflicts of interest of Governors**

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

18. **Council of Governors – travel expenses**

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

19. **Council of Governors – further provision**

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

20. **Board of Directors – composition**

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

20.2 Subject to paragraph 20.3, the Board of Directors is to comprise:

20.2.1 a non-executive Chair;

20.2.2 not more than seven other non-executive Directors; and

20.2.3 not more than seven executive Directors,

20.3 At least half of the Board of Directors, excluding the non-executive Chair, shall at all times comprise non-executive Directors.

20.4 One of the executive Directors shall be the Chief Executive.

20.5 The Chief Executive shall be the Accounting Officer.

20.6 One of the executive Directors shall be the Director of Finance.

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

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

21. **Board of Directors – qualification for appointment as a non-executive Director**

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

21.1 a member of the Public Constituency; and

21.2 not disqualified by virtue of paragraph 25 below or Annex 6.

22. **Board of Directors – appointment and removal of Chair and other non-executive directors**

22.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Foundation Trust and the other non-executive Directors.

22.2 Removal of the Chair or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.

22.3 Further details as to the appointment and removal of the Chair and other non-executive Directors is set out in Annex 6.

23. **Board of Directors – appointment of Deputy Chair**

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

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

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

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

24.3 A committee consisting of the Chair, the Chief Executive and other non-executive Directors shall appoint or remove the other executive Directors.

24.4 The Board of Directors may nominate one of the executive Directors to be the Deputy Chief Executive.

25. **Board of Directors – disqualification**

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

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

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

26. **Board of Directors – general duty**

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

27. **Board of Directors – standing orders**

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

28. **Board of Directors - conflicts of interest of Directors**

28.1 The duties that a Director of the Foundation Trust has by virtue of being a Director include, in particular: -

- 28.1.1 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 Foundation Trust; and

- 28.1.2 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.
- 28.2 The duty referred to in paragraph 28.1.1 is not infringed if:
 - 28.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 28.2.2 The matter has been authorised in accordance with the constitution.
- 28.3 The duty referred to in paragraph 28.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 28.4 In paragraph 28.1.2, “a third party” means a person other than:
 - 28.4.1 The Foundation Trust; or
 - 28.4.2 A person acting on the Foundation Trust’s behalf.
- 28.5 The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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

- 29.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive Directors.
- 29.2 The Foundation Trust shall establish a committee of up to 4 non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive Directors.

30. **Registers**

The Foundation Trust shall have:

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

- 30.2 a register of members of the Council of Governors;
- 30.3 a register of interests of Governors;
- 30.4 a register of Directors; and
- 30.5 a register of interests of the Directors.

31. **Admission to and removal from the registers**

The Company 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.

32. **Registers – inspection and copies**

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

32.2 The Foundation 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 Foundation Trust, if the member so requests.

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

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

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

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

33. **Documents available for public inspection**

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

33.1.1 a copy of the current constitution;

- 33.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and
 - 33.1.3 a copy of the latest Annual Report;
 - 33.1.4 a copy of the latest information as to its forward planning; and
 - 33.1.5 a copy of the Foundation Trust's membership strategy.
- 33.2 The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times:
- 33.2.1 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;
 - 33.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 33.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 33.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 33.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
 - 33.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 33.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 33.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 33.2.9 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; and

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

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

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

34. **Auditor**

34.1 The Foundation Trust shall have an auditor.

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

35. **Audit committee**

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

36. **Accounts**

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

36.2 Monitor may, with the approval of the Secretary of State, give directions to the Foundation Trust as to the content and form of its accounts.

36.3 The accounts are to be audited by the Foundation Trust's auditor.

36.4 The Foundation Trust shall prepare in respect of each Financial Year Annual Accounts in such form as Monitor may, with the approval of the Secretary of State, direct.

36.5 The functions of the Foundation Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

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

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

- 37.2 The Annual Report must include:
- 37.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of the Public Constituency (taking into account the need for those eligible for such membership to be representative of those to whom the Foundation Trust provides services) and of the classes of the Staff Constituency is representative of those eligible for such membership;
 - 37.2.2 information on the Foundation Trust's policy on pay, the work of the committee established pursuant to paragraph 29.2 and such other procedures as the Foundation Trust has on pay.
 - 37.2.3 information on the remuneration of Directors and expenses of Governors and Directors, to be disclosed in bands.
- 37.3 The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 37.4 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 37.5 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 37.6 Each forward plan must include information about:
- 37.6.1 The activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on; and
 - 37.6.2 The income it expects to receive from doing so.
- 37.7 Where a forward plan contains a proposal that the Foundation Trust carry on an activity of the kind mentioned in paragraph 37.6.1, the Council of Governors must:
- 37.7.1 Determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Foundation Trust of its principal purpose or the performance of its other functions; and
 - 37.7.2 Notify the Directors of the Foundation Trust of its determination.
- 37.8 Where the Foundation Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the

proposal only if more than half of the members of the Council of Governors voting approve its implementation.

38. **Meeting of Council of Governors to consider annual accounts and reports**

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

38.1.1 the annual accounts;

38.1.2 any report of the auditor on them; and

38.1.3 the annual report.

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

38.3 The Foundation Trust may combine a meeting of the Council of Governors with the Annual Members' Meeting for the purposes of paragraph 38.1.

39. **Instruments**

39.1 The Foundation Trust shall have a seal.

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

40. **Amendment of the Constitution**

40.1 The Foundation Trust may make amendments of its constitution only if:

40.1.1 More than half of the members of the Council of Governors of the Foundation Trust voting approve the amendments;
and

40.1.2 More than half of the members of the Board of Directors of the Foundation Trust voting approve the amendments.

40.2 Amendments made under paragraph 40.1 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.

40.3 Where an amendment is made to the constitution in relation to 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 Foundation Trust):

- 40.3.1 At least one member of the Council of Governors must attend the next Annual Members' meeting and present the amendment; and
 - 40.3.2 The Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.
- 40.4 If, in accordance with paragraph 40.3, more than half of the members voting approve the amendment to the constitution in relation to the powers or duties of the Council of Governors, the amendment continues to have effect. Otherwise, the amendment ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 40.5 Amendments by the Foundation Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

41. **Mergers**

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

42. **Significant transactions**

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

42.2 For the purposes of this paragraph:

42.2.1 "Transaction" may be either an investment or a disinvestment.

42.2.2 A transaction is "significant" if its value equates to 15% of either the Foundation trust's Gross Assets, Income or Gross Capital (inclusive of the transaction), calculated with reference to the Foundation Trust's opening Balance Sheet for the Financial Year in which approval is being sought.

42.2.3 If more half of the members of the Council of Governors voting at a meeting of the Council decline to approve a significant transaction or any part

of it, the meeting must approve a Statement of Reasons for its rejection for the Board of Directors.

43. **Notice**

43.1 Unless otherwise stated, 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

43.2 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 72 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 72 hours after it was sent.

44. **Transitional provisions relating to amendments to public and staff constituencies and Council of Governors in 2013**

44.1 For the purposes of this paragraph, the "Date of Approval" shall mean the date on which Monitor approves the amendments to this constitution relating to the public constituency, staff constituency and the Council of Governors made by the Foundation Trust in 2013.

44.2 From the Date of Approval:

44.2.1 members of the following areas of the public constituency (specified in columns 1 to 3 inclusive) will be merged to form a new area for the public constituency (specified in column 4) as follows:

<u>Column 1</u>	<u>Column 2</u>	<u>Column 3</u>	<u>Column 4 – new area for the public constituency</u>
Bidston	Claughton	N/A	Bidston and Claughton
Birkenhead	Tranmere	Rock Ferry	Birkenhead, Tranmere and Rock Ferry
Greasby, Frankby, Irby	Woodchurch	N/A	Greasby, Frankby,

and Upton

Irby, Upton and
Woodchurch

Liscard

Seacombe

N/A

Liscard and
Seacombe

Neston, Little
Neston,
Parkgate and
Riverside

Burton, Ness,
Willaston and
Thornton

N/A

Neston, Little
Neston, Parkgate,
Riverside, Burton,
Ness, Willaston
and Thornton

44.2.2 members of the Ellesmere Port area of the public constituency will be transferred to the newly formed North West and North Wales area of the public constituency.

44.2.3 members of the following two classes of the staff constituency will merge:

44.2.3.1 registered nurses and registered midwives based at Arrowe Park Hospital; and

44.2.3.2 registered nurses and registered midwives based at Clatterbridge Hospital

to become the newly formed “registered nurses and registered midwives” class of the staff constituency.

44.2.4 Subject to paragraph 44.2.5, any Public or Staff Governor who is in office at the Date of Approval may remain in such office for the remainder of their term, unless his term in office is terminated or he is removed from office in accordance with the terms of this constitution.

44.2.5 From the Date of Approval:

44.2.5.1 The Governors representing an area of the public constituency specified in either columns 1, 2 or 3 of the table at paragraph 44.2 shall represent the corresponding area within column 4 of that table.

44.2.5.2 The Governor representing the Ellesmere Port area of the public constituency will represent

the newly formed North West and North Wales area of the public constituency.

44.2.5.3 the Governors representing the two classes at paragraph 44.2.3.1 or paragraph 44.2.3.2 shall represent the newly formed “registered nurses and registered midwives” class of the staff constituency.

44.2.6 Following the Date of Approval, elections for a new Elected Governor to represent any of the new areas specified within column 4 of the table at paragraph 44.2 shall not take place until such time as all of the Governors representing that respective area by virtue of the transitional provisions in this paragraph 44 have either:

44.2.6.1 reached the end of their term in office;

44.2.6.2 are removed from office; or

44.2.6.3 had their office terminated in accordance with this constitution,

whichever is the earlier.

45. **Interpretation and definitions**

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

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

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

“the Accounting Officer” means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

“Appointed Governors” means those Governors appointed by the appointing organisations;

“Appointing Organisations” means those organisations named in this constitution who are entitled to appoint Governors;

“Company Secretary”	means the Company Secretary of the Foundation Trust or any other person appointed to perform the duties of the Company Secretary, including a joint, assistant or deputy Company Secretary;
“constitution”	means this constitution and all annexes to it;
“Director”	means a member of the Board of Directors;
“Elected Governors”	means those Governors elected by the Public constituency and the classes of the Staff Constituency;
“Financial Year”	means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April;
“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of an area for a public constituency of the Foundation Trust;
“Monitor”	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
“Partner”	means, in relation to another person, a member of the same household living together as a family unit;
“Public Governor”	means a Governor elected by the members of one of the areas of the Public Constituency;
“Staff Governor”	means a Governor elected by the members of one of the classes of the Staff Constituency;
“the 2006 Act”	means the National Health Service Act 2006;
“the 2012 Act”	means the Health and Social Care Act 2012;
“Voluntary Organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit.

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

Bebington and Clatterbridge
Bidston and Claughton
Birkenhead, Tranmere and Rock Ferry
Bromborough and Eastham
Greasby, Frankby, Irby, Upton and Woodchurch
Heswall, Pensby and Thingwall
Leasowe, Moreton and Saughall Massie
Liscard and Seacombe
Neston, Little Neston, Parkgate, Riverside, Burton, Ness, Willaston and Thornton
New Brighton and Wallasey
North West and North Wales¹
Oxton and Prenton
West Wirral

The minimum number of members of each of the areas of the Public Constituency is to be four.

¹ This area of the Public Constituency comprises:

- the geographical area covered by the Betsi Cadwaladr University Local Health Board as set out in the Local Health Boards (Establishment and Dissolution) (Wales) Order 2009; and
- any other geographical area covered by the North West Strategic Health Authority, as set out in the Strategic Health Authorities (Establishment and Abolition) (England) Order 2006, which is not already included within any other area of the Public Constituency.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.3 and 7.4)

1. Registered medical practitioners and registered dentists
2. Registered nurses and registered midwives
3. Other healthcare professional staff
4. Other Trust staff

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

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 9.2 and 9.3)

The Council of Governors of the Foundation Trust is to comprise:

- 1 thirteen Public Governors from the following areas of the Public Constituency:
 - 1.1 Bebington and Clatterbridge – one Public Governor;
 - 1.2 Bidston and Claughton – one Public Governor;
 - 1.3 Birkenhead, Tranmere and Rock Ferry – one Public Governor;
 - 1.4 Bromborough and Eastham – one Public Governor;
 - 1.5 Greasby, Frankby, Irby, Upton and Woodchurch – one Public Governor;
 - 1.6 Heswall, Pensby and Thingwall – one Public Governor;
 - 1.7 Leasowe, Moreton and Saughall Massie – one Public Governor;
 - 1.8 Liscard and Seacombe – one Public Governor;
 - 1.9 Neston, Little Neston, Parkgate, Riverside, Burton, Ness, Willaston and Thornton – one Public Governor;
 - 1.10 New Brighton and Wallasey – one Public Governor;
 - 1.11 North West and North Wales – one Public Governor;
 - 1.12 Oxtan and Prenton – one Public Governor; and
 - 1.13 West Wirral – one Public Governor.
- 2 five Staff Governors from the following classes;
 - 2.1 registered medical practitioners and registered dentists – one Staff Governor;
 - 2.2 registered nurses and registered midwives – two Staff Governors;
 - 2.3 other healthcare professional staff – one Staff Governor; and
 - 2.4 other Trust staff – one Staff Governor.
- 3 two Local Authority Governors to be appointed by Wirral Metropolitan Borough Council.

4 Two Governors to be appointed by:

4.1 Liverpool University – one Partnership Governor;

4.2 Wirral Third Sector Assembly – one Partnership Governor.

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 10.2)

Model Election Rules

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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

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9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
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22. List of eligible voters
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The poll

26. Eligibility to vote
27. Voting by persons who require assistance
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- fpp54. Countermand or abandonment of poll on death of candidate
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- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
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Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

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

Part 1 - Interpretation

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

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

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

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

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

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

Part 2 – Timetable for election

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

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

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

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

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

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

Part 3 – Returning officer

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

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

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

6. Expenditure - The corporation is to pay the returning officer –

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

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

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

(2) The returning officer-

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

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

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

- (a) full name,
- (b) contact address in full, and

- (c) constituency, or class within a constituency, of which the candidate is a member.

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

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

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

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

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

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

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

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

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

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

1. that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,

2. that the paper does not contain the candidate's particulars, as required by rule 10;
3. that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
4. that the paper does not include a declaration of eligibility as required by rule 12, or
5. that the paper is not signed and dated by the candidate, as required by rule 13.

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

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

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

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

(2) The statement must show –

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

as given in their nomination paper.

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

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

16. Inspection of statement of nominated candidates and nomination papers –

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

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

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

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

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

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

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

Part 5 – Contested elections

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

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

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

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

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

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

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

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

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

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

Action to be taken before the poll

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

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

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

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

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

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

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

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

(2) The covering envelope is to have –

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

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

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

The poll

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and

(d) the date that the declaration was made by the voter.

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

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

Procedure for receipt of envelopes

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

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

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

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

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

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

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

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

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

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

- (a) mark the ballot paper “disqualified”,

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

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

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

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

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

Part 6 - Counting the votes

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

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

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

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

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

“non-transferable vote” means a ballot paper –

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

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

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

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

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

“stage of the count” means –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The returning officer is to –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (7) The vote on each ballot paper transferred under paragraph (6) shall be at –
- (a) a transfer value calculated as set out in paragraph (4)(b) above, or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

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

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

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

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

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

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,

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

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

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

stv44. Exclusion of candidates – (1) If—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

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

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

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

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

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

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

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

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

Part 7 – Final proceedings in contested and uncontested elections

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the board of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected—
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

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

available on request.

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

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

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,

- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule stv39(1),

available on request.

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

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

Part 8 – Disposal of documents

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

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

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

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

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

- (a) its contents,

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

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

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

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

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

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

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

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

53. Application for inspection of certain documents relating to an election –

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

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

by any person without the consent of the Regulator.

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

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

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

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

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

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

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

Part 9 – Death of a candidate during a contested election

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

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

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

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

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

(5) The returning officer is to –

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

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

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

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

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

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

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

Part 10 – Election expenses and publicity

Election expenses

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

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

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

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

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

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

Publicity

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

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

as it considers necessary.

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and

- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

59. Information about candidates for inclusion with voting documents - (1)

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

(2) The information must consist of –

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

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

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

(4) The application must –

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

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

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

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

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

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

(9) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

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

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

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

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

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

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

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

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraphs 11.1, 11.5, 12.3 and 19)

Elected Governors

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

Appointed Governors

2. The Company Secretary, having consulted Wirral Metropolitan Borough Council, is to adopt a process for agreeing the appointment of Local Authority Governors with that local authority.
3. The other Appointed Governors are to be appointed by their respective Appointing Organisations, in accordance with a process agreed by that organisation with the Company Secretary.

Appointment of Lead Governor of the Council of Governors

4. The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors, who shall hold office for a period of two years from their date of appointment.

Further provisions as to eligibility to be a Governor

5. Paragraphs 6 – 7 apply in addition to the grounds set out at paragraph 11 and 12 of the constitution.
6. A person may not be appointed as an Appointed Governor and, if already holding office as an Appointed Governor, will immediately cease to do so if, he is an Elected Governor or a candidate for election as an Elected Governor.
7. A person may not become a Governor (whether Appointed or Elected) of the Foundation Trust, and, if already holding such office, will immediately cease to do so, if:
 - 7.1 he is a Director of the Foundation Trust or a Governor or Director of an NHS body (unless he is appointed by an Appointing Organisation which is an NHS body);
 - 7.2 he is the spouse, Partner, parent or child of a member of the Board of Directors of the Foundation Trust;

- 7.3 he is a member of a local authority's Scrutiny Committee covering health matters;
- 7.4 he is an employee or appointed official of Local Healthwatch;
- 7.5 he has been previously removed as a Governor pursuant to paragraph 8 of this Annex 5.
- 7.6 being a member of the Public Constituency, he refuses to sign a declaration in the form specified by the Company Secretary of particulars of his qualification to vote as a member of the Foundation Trust, and that he is not prevented from being a member of the Council of Governors;
- 7.7 he is subject to a sex offender order;
- 7.8 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
- 7.9 he is a person whose tenure of office as the Chair or as a member or Director of an NHS body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 7.10 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs;
- 7.11 he has had his name removed from any list prepared under Parts 4, 5, 6 or 7 of the 2006 Act and has not subsequently had his name included in such a list;
- 7.12 he is a member of a class of the Staff Constituency and any professional registration relevant to his eligibility to continue to be a member of that class of the Staff Constituency has been suspended (by way of an imposition of a penalty) for a continuous period of more than six months; or
- 7.13 he is a Member of the UK Parliament.

Council of Governors: Removal and Disqualification

- 8. A person holding office as a Governor shall immediately cease to do so if:
 - 8.1 he resigns by notice in writing to the Company Secretary;

- 8.2 the relevant organisation which he represents ceases to exist;
- 8.3 he fails to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:
 - 8.3.1 the absences were due to reasonable causes; and
 - 8.3.2 he will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;
- 8.4 he has refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
- 8.5 he has failed to sign and deliver to the Company Secretary a statement in the form required by the Company Secretary confirming acceptance of the code of conduct for Governors;
- 8.6 he has failed to make, or has falsely made, any declaration required to be made under Section 60 of the 2006 Act and has voted at an election for the Council of Governors of the Foundation Trust and he is judged to have acted so by a majority of not less than two thirds of the Council of Governors;
- 8.7 he has failed to disclose any direct or indirect pecuniary or non-pecuniary interest required to be disclosed under this constitution and he is required to permanently vacate his office by a majority of the remaining Governors;
- 8.8 Monitor has exercised its powers to remove him as a Governor of the Foundation Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Foundation Trust for a specified period or Monitor has exercised any of those powers in relation to him on any other occasion in relation to any Foundation Trust;
- 8.9 he is 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:
 - 8.9.1 he has committed a serious breach of the code of conduct; or
 - 8.9.2 he has acted in a manner detrimental to the interests of the Foundation Trust; and
 - 8.9.3 the Council of Governors consider that it is not in the best interests of the Foundation Trust for him to continue as a Governor.

Vacancies amongst Governors

9. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
10. Where the vacancy arises amongst the Appointed Governors, the Company Secretary shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.
11. Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
 - 11.1 to call an election within three months to fill the seat for the remainder of that term of office; or
 - 11.2 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 fall vacant and subject to election for any unexpired period of the term of office. Should that candidate decline, the Council of Governors shall be at liberty to approach each of the remaining next highest polling candidates in order until the seat is filled in accordance with this paragraph, failing which the options referred to in paragraphs 11.1 and 11.3 of this Annex shall be available to the Council of Governors; or
 - 11.3 if the unexpired period of the term of office is less than six months, to leave the seat vacant until the next elections are held.

ANNEX 6 - ADDITIONAL PROVISIONS – BOARD OF DIRECTORS

(Paragraphs 21.2, 22.3 and 25)

Appointment and Removal of Chair and other Non-executive Directors

1. Non-executive Directors are to be appointed by the Council of Governors using the following procedure.
 - 1.1 The Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
 - 1.2 The Board of Directors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive Directors.
 - 1.3 Appropriate candidates will be identified by a Nominations Committee through a process of open competition, which takes account of the policy maintained by the Council of Governors and the skills and experience required, referred to in paragraphs 1.1 and 1.2 above.
 - 1.4 The Nominations Committee will comprise the Chair of the Foundation Trust (or, when a Chair is being appointed, the Deputy Chair unless they are standing for appointment, in which case another non-executive Director), three elected Public Governors, one elected Staff Governor and one Appointed Governor. The Nominations Committee will be advised by an independent assessor, who may be a chair of another Foundation Trust. The Chief Executive will be entitled to attend meetings of the Nominations Committee unless the Committee decides otherwise and the Committee shall take into account the Chief Executive's views.
2. The removal of the Chair or another non-executive Director shall be in accordance with the following procedures.
 - 2.1 Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two Elected Governors and two Appointed Governors.
 - 2.2 Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.
 - 2.3 In making any decision to remove a non-executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chair.
 - 2.4 If any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put

forward to remove such non-executive Director based upon the same reasons within twelve (12) months of that meeting.

Further provisions as to disqualification of Directors

3. Paragraph 4 of this Annex applies in addition to the grounds set out at paragraph 25 of the constitution.
4. A person may not become or continue as a Director of the Foundation Trust if:
 - 4.1 he is a member of the Council of Governors or a Governor or Director of an NHS body;
 - 4.2 he is an employee or appointed official of Local Healthwatch;
 - 4.3 he is the spouse, Partner, parent or child of a member of the Board of Directors of the Foundation Trust;
 - 4.4 he is a member of a local authority's Scrutiny Committee covering health matters;
 - 4.5 he is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 4.6 he is a person whose tenure of office as a Chair or as a member or Director of an NHS body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
 - 4.7 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
 - 4.8 in the case of a non-executive Director, he has refused without reasonable cause to fulfill any training requirement established by the Board of Directors; or
 - 4.9 he has refused to sign and deliver to the Company Secretary a statement in the form required by the Board of Directors confirming acceptance of the Code of Conduct for Directors.
 - 4.10 he fails to disclose any direct or indirect pecuniary or non-pecuniary interest required to be disclosed under this constitution and is required to permanently vacate his office by a majority of the remaining Directors and (in the case of a non-executive Director) by three quarters of the Council of Governors.

Expenses

5. The Foundation Trust may reimburse executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.

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

(Paragraph 15)

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Interpretation

- 1.1. Save as permitted by law, the Chair of the Foundation Trust shall be the final authority on the interpretation of Standing Orders (on which he shall be advised by the Chief Executive and Director of Finance).
- 1.2. Any expression to which a meaning is given in the National Health Service Act 2006 shall have the same meaning in this interpretation and in addition:

"Board" shall mean the Chair of the Foundation Trust and non-executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the Appointments Committee of the Board.

"Chair" is the person appointed by the Council of Governors in accordance with paragraph 22 of this constitution. The expression "the Chair" shall be deemed to include the non-executive Director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent or is otherwise unavailable (the Deputy Chair) and any other non-executive Director appointed to take on the duties of Chair in the absence of the Deputy Chair. The expression "the Chair" shall also, for the purpose of these Standing Orders, be deemed to include the Lead Governor for so long as the Lead Governor chairs a meeting of the Council in accordance with standing order 3.3 of these Standing Orders.

"Chief Executive" shall mean the chief officer of the Foundation Trust.

"Committee" shall mean a committee appointed by the Council of Governors.

"Committee members" shall be persons formally appointed by the Council of Governors to sit on or to chair specific committees.

"Company Secretary" shall mean the person appointed by the Board to ensure the Foundation Trust complies with relevant legislation and to establish procedures for the sound governance of the Foundation Trust.

"Director" shall mean a person appointed to the Board of Directors in accordance with the Foundation Trust's constitution and includes the Chair of the Foundation Trust.

"Foundation Trust" means the Wirral University Teaching Hospital NHS Foundation Trust.

"Lead Governor" means the person appointed by the Council of Governors in accordance with Annex 5 paragraph 4 of the constitution to be Lead Governor of the Council of Governors.

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

"Officer" means an employee of the Foundation Trust.

2. General Information

- 2.1. The purpose of the Council of Governors Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the Foundation Trust's Code of Conduct for Governors.
- 2.2. All business shall be conducted in the name of the Foundation Trust.
- 2.3. The Board of Directors shall appoint Foundation Trustees to administer separately charitable funds received by the Foundation Trust and for which they are accountable to the Charity Commission.
- 2.4. A Governor who has acted honestly and in good faith will not have to meet out of his own personal resources any personal civil liability which is incurred in the execution or purported execution of his functions as a Governor save where the Governor has acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for the benefit of members of the Council of Governors.

3. Composition of the Council of Governors

- 3.1. The composition of the Council of Governors shall be in accordance with paragraph 9 and Annex 3 of the Foundation Trust's Constitution.
- 3.2. **Appointment and Removal of the Chair, Deputy Chair and Lead Governor of the Council of Governors** - These appointments shall be made by the Governors in accordance with paragraphs 22 and 23 and Annex 5 paragraph 4 of the Foundation Trust's constitution.
- 3.3. **Duties of Deputy Chair and Lead Governor** – For the purpose of these Standing Orders and meetings of the Council of Governors, where the Chair of the Foundation Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair of the Foundation Trust or, in the event that the Deputy Chair has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Deputy Chair owing to illness, absence from England and Wales or any other cause, to the non-executive Director appointed to take on the duties of Chair in the absence of the Deputy Chair. If the person presiding at any meeting of the Council of Governors has a conflict of interest in relation to the business being discussed, the Lead Governor appointed by the Council of Governors will chair that part of the meeting.

4. Meetings of the Council of Governors

4.1. Meetings held in Public

- 4.1.1 As stipulated by paragraph 14.2 of the constitution, meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds.
- 4.1.2 However, the Chair may exclude any member of the public from the meeting of the Council if he considers that he is interfering with or preventing proper conduct of the meeting or for other special reasons pursuant to paragraph 14.2 of the constitution.
- 4.1.3 Meetings of the Council of Governors shall be held at least three times in each financial year at such times and places that the Council of Governors may determine.
- 4.1.4 Without prejudice to the power of paragraph 14.3 of the constitution to require one or more Directors of the Foundation Trust to attend a meeting of the Council of Governors so that it may obtain information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and decide whether to propose a vote on the Foundation Trust's or Directors' performance), the Council may invite the Chief Executive, other appropriate Directors or other officers of the Foundation Trust to attend any meeting of the Council to enable Governors to raise questions about the Foundation Trust's affairs. The Council may also invite a representative of the auditor or any of the other Foundation Trust's advisors, to attend a meeting of the Council.

4.2 Calling Meetings

- 4.2.1 Notwithstanding standing order 4.1.3 above, the Company Secretary or the Chair may call a meeting of the Council of Governors at any time.
- 4.2.2 Ten Governors (including at least two Elected Governors and two Appointed Governors) may call a meeting of the Council of Governors at any time by giving written notice to the Company Secretary specifying the business to be carried out. On receipt of such a request by ten Governors, the Company Secretary shall send a written notice to all Governors and shall, save in the case of emergencies or the need to conduct urgent business, call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Company Secretary

fails to call such a meeting, then the ten Governors shall call such a meeting.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council of Governors, a written notice of the meeting, specifying the date and place of the meeting, shall be delivered by the Company Secretary to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least fourteen clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to paragraph 4.3.4 below. Notice of the meeting shall also be published on the Foundation Trust's website.

4.3.2 Notwithstanding the above requirement for notice, the Company Secretary or the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business.

4.3.3 In the case of a meeting called by the Company Secretary at the request of ten Governors or in the case of a meeting called by ten Governors in default of the Company Secretary, no business shall be transacted at the meeting other than that specified in the notice.

4.3.4 Subject to paragraph 4.3.2, failure to serve notice on more than three quarters of Governors will invalidate any meeting. A notice will be presumed to have been served 72 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 72 hours after it was sent.

4.4 Setting the Agenda

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

4.4.2 Save for in the case of a meeting called by the Company Secretary at the request of ten Governors and in the case of a meeting called by ten Governors, a Governor desiring a matter to be included on an agenda shall make his request in writing to the Company Secretary at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Company Secretary or the Chair.

4.4.3 The Company Secretary shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2

above, are delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least five clear days before the meeting. For the avoidance of doubt, the final agenda and/or supporting papers may be delivered using electronic communications in accordance with paragraph 43.1 of the constitution.

4.5 Chair of Meeting

At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting or the Council of Governors is meeting to appoint or remove the Chair or decide his remuneration and allowances and other terms and conditions of office, the Deputy Chair shall preside. If the Deputy Chair is absent from the meeting, or the Council of Governors is meeting to appoint or remove the Deputy Chair or decide his remuneration and allowances and other terms and conditions of office, the Non-Executive Director appointed to take on the duties of Chair in the absence of the Deputy Chair shall preside. If the person presiding at any meeting of the Council of Governors has a conflict of interest in relation to the business being discussed, the Lead Governor appointed by the Council of Governors will chair that part of the meeting.

4.6 Notices of Motions

4.6.1 A Governor of the Foundation Trust desiring to move or amend a motion shall send a written notice thereof at least two clear days before the meeting to the Company Secretary, who shall insert this in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3.3 of these Standing Orders.

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

4.6.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who gave it and also the signature of four other Governors. When any such motion has been disposed of by the Assembly it shall not be competent for any Governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.

4.6.4 The mover of a motion shall have a right of reply at the close of

any discussion on the motion or any amendment thereto.

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

- (a) An amendment to the motion.
- (b) The adjournment of the discussion or the meeting.
- (c) The appointment of an ad hoc committee to deal with a specific item of business.
- (d) That the meeting proceed to the next business.
- (e) That the motion be now put.

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

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

4.7 Attendance at Meetings

4.7.1 The Council of Governors may in exceptional circumstances agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

4.7.2 Governors who are unable to attend a meeting should advise the Company Secretary in advance of the meeting so that their apologies may be submitted.

4.8 Chair's Ruling

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

4.9 Voting

4.9.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting, save that the removal of the Chair or another Non-Executive Director from office shall require the approval of three-quarters of the members of the Council of Governors. In the case of any equality of votes, the person presiding shall have a second or casting vote. However,

no resolution shall be passed if it is opposed by all of the Public Governors present.

- 4.9.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.9.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.9.4 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.9.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.9.6 An Elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Company Secretary of the particulars of their qualification to vote as a member of the Foundation Trust and that they are not prevented from being a member of the Foundation Trust. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors and every agenda for meetings of the Council of Governors shall draw this to the attention of the Governors.
- 4.9.7 The result of any vote shall be included in the minutes of the meeting and the minutes will be conclusive evidence of the result of the vote.

4.10 Suspension of Standing Orders

- 4.10.1 Except where this would contravene any statutory provision or a direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.
- 4.10.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.10.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.10.4 No formal business may be transacted while Standing Orders are

suspended.

4.10.5 The Foundation Trust's Audit Committee shall review every decision to suspend Standing Orders.

4.11 Variation and Amendment of Standing Orders

These Standing Orders may be amended in accordance with the provisions of paragraph 38 of the Foundation Trust's constitution only if

4.11.1 notice of a motion to amend the Standing Orders has been given; and

4.11.2 the variation/amendment proposed does not contravene a statutory provision or a direction made by the Secretary of State

4.12 Record of Attendance

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

4.13 Minutes

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

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

4.13.3 Minutes shall be circulated in accordance with the Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded in accordance with stranding order 4.1.1 of these Standing Orders.

4.14 Quorum

4.14.1 No business shall be transacted at a meeting of the Council of Governors unless at least eight Governors, including not less than five Public Governors are present.

4.14.2 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 and notice

of the adjourned meeting shall be circulated to members of the Council of Governors. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Governors present during the meeting is to be a quorum.

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

5. Arrangements for the Exercise of Functions by Delegation

- 5.1 **Emergency Powers** - The powers which the Council of Governors has retained to itself within these Standing Orders may in an emergency be exercised by the Chair after having consulted at least five elected Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council for ratification.
- 5.2 **Delegation of duties** – The Council of Governors may delegate duties to an individual Governor, committee or sub-committee but only under a clear remit approved by the Council.
- 5.3 **Delegation of powers** - The Council may not delegate any of its powers to an individual Governor, committee or sub-committee.
- 5.4 **Committees** – The Council of Governors may appoint committees consisting of its members, Directors and other persons to assist it in carrying out its functions. The Council may, through the Company Secretary, request that advisors assist it or any committee it appoints in carrying out their duties. These Standing Orders shall, so far as they are applicable, apply, with appropriate alteration, to meetings of any committees established by the Council.
- 5.5 Each such committee shall have such terms of reference and be subject to such conditions, as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders. The Council shall approve the membership of all committees that it formally constitutes and shall determine the Chair of each such committee.

6. Confidentiality

A member of the Council of Governors or any committee appointed by the Council shall not disclose a matter dealt with by, or brought before, the Council of Governors or the committee as the case may be, without its permission, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

7. Declaration of Interests and Register of Interests

7.1 Declaration of Interests

Governors are required to comply with the Foundation Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

7.1.1 Interests regarded as "relevant and material" include any of the following, held by a Governor, or the spouse or Partner of a Governor:

- a. Directorships, including non-executive Directorships, held in private companies or PLCs (with the exception of those of dormant companies).
- b. Any interest or position in any firm, company, business or organisation (including any charitable or Voluntary Organisation), which has or is likely to have a trading or commercial relationship with the Foundation Trust.
- c. Any interest in an organisation providing health and social care services to 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 any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

7.1.2 Interests which shall not be treated as "relevant and material" are:

- a. Shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange.
- b. An employment contract with the Foundation Trust held by a Staff Governor.
- c. An employment contract with a local authority held by a Local Authority Governor.

d. An employment contract with or other position of authority within an Appointing Organisation held by an Appointed Governor.

7.1.3 If a Governor has any doubt about the relevance of an interest, he should discuss it with the Chair who shall advise him whether or not to disclose the interest.

7.1.4 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of Interests of Governors to be maintained by the Company Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.

7.1.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall withdraw from the meeting and play no part in the relevant discussion or decision. He shall not be entitled to vote on the issue in respect of which the conflict of interest has been established (and if by inadvertence they do remain and vote, their vote shall not be counted).

7.1.6 Any Governor who fails to disclose any interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors in accordance with Annex 5 of the constitution.

7.2 Register of Interests

7.2.1 The Company Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

7.2.2 Details of the Register will be kept up to date and reviewed annually.

7.2.3 The Register will be available to the public.

8. Compliance - Other Matters

8.1 All Governors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Foundation Trust.

8.2 All Governors shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Foundation Trust.

8.3 All Governors shall comply with the Foundation Trust's Code of Conduct for Governors as amended from time to time.

8.4 All Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life: -

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty, and
- Leadership.

9. Resolution of Disputes with Board of Directors

9.1. Should a dispute arise between the Council and the Board of Directors, then the disputes resolution procedure set out below shall be followed.

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

9.3. Failing resolution under 9.2 above, then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

9.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

9.5. The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.

9.6. If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as

the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and Board accordingly.

- 9.7. On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8. On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9. Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Foundation Trust is not meeting the terms of its constitution or failed to comply with the NHS Act 2006.

10. Validity of actions

No defect or deficiency in the appointment or composition of the Council of Governors shall affect the validity of any action taken by the Council of Governors.

11. Council Performance

The Chair shall, at least annually, lead a performance assessment process for the Council to enable the Council to review its roles, structure and composition, and procedures, taking into account emerging best practice.

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

(Paragraph 27)

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1. Interpretation

- 1.1. Save as permitted by law, the Chair of the Foundation Trust shall be the final authority on the interpretation of Standing Orders (on which s/he shall be advised by the Chief Executive and Director of Finance).
- 1.2. Any expression to which a meaning is given in the National Health Services Act 2006 shall have the same meaning in this interpretation and in addition:

"Accounting Officer" shall be the Officer responsible and accountable for funds entrusted to the Foundation Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Foundation Trust it shall be the Chief Executive.

"Board" shall mean the Chair of the Foundation Trust and non-executive Directors, appointed by the Council of Governors, and the executive Directors appointed by the Appointments Committee of the Board.

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

"Chair" is the person appointed by the Council of Governors in accordance with paragraph 22 of the Constitution. The expression "the Chair" shall be deemed to include the Deputy Chair or otherwise a non-executive Director appointed by the Board to preside for the time being over its meetings.

"Chief Executive" shall mean the chief officer of the Foundation Trust.

"Committee" shall mean a committee appointed by the Board.

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

"Company Secretary" shall mean the person appointed by the Board of Directors to ensure the Foundation Trust complies with relevant legislation and to establish procedures for the sound governance of the Foundation Trust.

"Director" shall mean a person appointed to the Board of Directors in accordance with the Foundation Trust's Constitution and includes the Chair.

“Foundation Trust” means the Wirral University Teaching Hospital NHS Foundation Trust.

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

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

"Officer" means an employee of the Foundation Trust.

2. General Information

- 2.1. The purpose of the Board Standing Orders is to ensure that the highest standards of corporate governance are achieved in the Board and throughout the organisation. The Board shall at all times seek to comply with the Foundation Trust's Code of Conduct for Directors.
- 2.2. All business shall be conducted in the name of the Foundation Trust.
- 2.3. The Directors shall appoint Foundation Trustees to administer separately charitable funds received by the Foundation Trust and for which they are accountable to the Charity Commission.
- 2.4. A Director who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Director save where the Director has acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for the benefit of members of the Board.

3. Composition of the Board

- 3.1. The composition of the Board shall be in accordance with paragraph 20 of the Foundation Trust's constitution.
- 3.2. **Appointment and Removal of the Chair and Non-Executive Directors** - The Chair and non-executive Directors are appointed/removed by the Council of Governors in accordance with the Foundation Trust's Constitution.
- 3.3. **Appointment and Removal of the Executive Directors** – The Appointments Committee of the Board (excluding the Chief Executive) shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors). The Appointments Committee of the Board (inclusive of the Chief Executive) shall appoint or remove the other executive Directors.

- 3.4. **Appointment and Removal of Deputy Chair** – For the purpose of enabling the proceedings of the Foundation Trust to be conducted in the absence of the Chair, the Council of Governors of the Foundation Trust will appoint one of the non-executive Directors to be the Deputy Chair.
- 3.5. **Powers of Deputy Chair** - Where the Chair of the Foundation Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his duties, be taken to include references to the Deputy Chair or, in the event that the Deputy Chair has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Deputy Chair owing to illness, absence from England and Wales or any other cause, to the non-executive Director appointed to take on duties of Chair in the absence of the Deputy Chair.
- 3.6. **Joint Directors** - Where more than one person is appointed jointly to a post in the Foundation Trust which qualifies the holder for executive Directorship or in relation to which an executive Director is to be appointed, those persons shall become appointed as an executive Director jointly, and shall count as one person.
- 3.7. Non-executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of non-executive Directors.

4. Meetings of the Board

4.1. Meetings held in Public

- 4.1.1. Meetings of the Board must be open to the public, unless the Board in its absolute discretion decides otherwise in relation to all or part of such meetings for reasons of commercial confidentiality or on other proper grounds.
- 4.1.2. The Chair may exclude any member of the public from the meeting of the Board if he considers that he is interfering with or preventing proper conduct of the meeting.
- 4.1.3. Meetings of the Board shall be held at least three times in each financial year at such times and places that the Board may determine.
- 4.1.4. The Board shall arrange for an annual public meeting to be held within 9 months of the end of each financial year. The registers and documents set out in paragraphs 30 and 33 of this constitution shall be available for inspection at the meeting subject to the provisions of paragraph 32.2 of the constitution.

4.2. **Calling Meetings**

4.2.1. Notwithstanding paragraph 4.1.3 above, the Company Secretary or the Chair may call a meeting of the Board at any time.

4.2.2. Four Directors may call a meeting of the Board at any time by giving written notice to the Company Secretary specifying the business to be carried out. On receipt of such a request by four Directors, the Company Secretary shall send a written notice to all Directors and shall, save in the case of emergencies or the need to conduct urgent business, call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Company Secretary fails to call such a meeting, then the four Directors shall call such a meeting.

4.3. **Notice of Meetings**

4.3.1. Before each meeting of the Board, a written notice of the meeting, specifying the date and place of the meeting, shall be delivered by the Company Secretary to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least fourteen clear days before the meeting. Lack of service of the notice on any Director shall not affect the validity of a meeting, subject to paragraph 4.3.4 below. Notice of the meeting shall also be published on the Foundation Trust's website.

4.3.2. Notwithstanding the above requirement for notice, the Company Secretary or the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business or on written receipt of the agreement of at least two-thirds of Directors (executive and non-executive Directors taken together) but to include a minimum of two executive Directors and two non-executive Directors.

4.3.3. In the case of a meeting called by the Company Secretary at the request of four Directors or in the case of a meeting called by four Directors in default of the Company Secretary, no business shall be transacted at the meeting other than that specified in the notice.

4.3.4. Subject to paragraph 4.3.2, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 72 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 72 hours after it was sent.

4.4. **Setting the Agenda**

- 4.4.1. The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 4.4.2. Save for in the case of a meeting called by the Company Secretary at the request of four Directors and in the case of a meeting called by four Directors, a Director desiring a matter to be included on an agenda shall make her request in writing to the Company Secretary at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Company Secretary or the Chair.
- 4.4.3. The Company Secretary shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least five clear days before the meeting. Copies of the final agenda must be delivered or sent to the Council of Governors at the same time. For the avoidance of doubt, the final agenda and/or supporting papers may be delivered using electronic communications in accordance with paragraph 43.1 of the constitution.

4.5. **Chair of Meeting**

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

4.6. **Notices of Motions**

- 4.6.1. A Director of the Foundation Trust desiring to move or amend a motion shall send a written notice thereof at least two clear days before the meeting to the Company Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to paragraph 4.3.3 above.
- 4.6.2. A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

- 4.6.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. When any such motion has been disposed of by the Board it shall not be competent for any Director, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if s/he considers it appropriate.
- 4.6.4. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5. When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- (a) An amendment to the motion.
 - (b) The adjournment of the discussion or the meeting.
 - (c) The appointment of an ad hoc committee to deal with a specific item of business.
 - (d) That the meeting proceed to the next business.
 - (e) That the motion be now put.

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

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

4.7. Attendance at Meetings

- 4.7.1. The Board of Directors may in exceptional circumstances agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 4.7.2. Directors who are unable to attend a meeting should advise the Company Secretary in advance of the meeting so that their apologies may be submitted.

4.8. Chair's Ruling

Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the

Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

4.9. **Voting**

- 4.9.1. Decisions at meetings shall be determined by a majority of the votes of the Directors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote. However, no resolution shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.
- 4.9.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.9.3. If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.9.4. If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.9.5. In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.9.6. 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.

4.10. **Joint Directors**

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

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

4.11. **Suspension of Standing Orders**

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

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

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

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

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

4.12. **Variation and Amendment of Standing Orders**

4.12.1. These Standing Orders may be amended in accordance with the provisions of paragraph 40 of the Foundation Trust's constitution only if:

4.12.2. notice of a motion to amend the Standing Orders has been given; and

4.12.3. no fewer than two-thirds of the number of members of the Board approve the variation/amendment; and

4.12.4. the variation/amendment proposed does not contravene a statutory provision or a direction made by the Secretary of State.

4.13. **Record of Attendance**

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

4.14. **Minutes**

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

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

Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.14.3. Unapproved minutes shall be circulated to the Council of Governors as soon as practicable after each meeting of the Board. Once agreed, minutes shall be circulated in accordance with Directors' wishes. The minutes shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of standing order 4.1 of these Standing Orders.

4.15. Quorum

4.15.1. No business shall be transacted at a meeting of the Board unless at least six Directors are present including at least three executive Directors (one of whom must be the Chief Executive or another executive Director nominated by the Chief Executive) and at least three non-executive Directors (one of whom must be the Chair or the Deputy Chair).

4.15.2. An Officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.

4.15.3. 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 Board determine and notice of the adjourned meeting shall be circulated to members of the Board. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Directors present during the meeting is to be a quorum.

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

5. Arrangements for the Exercise of Functions by Delegation

5.1. Subject to the requirements of any statutory provision or any direction made by the Secretary of State, the Board may make arrangements for the exercise, on behalf of the Foundation Trust, of any of its functions by a committee or sub-committee, or by a Director or an Officer of the Foundation Trust in each case subject to such restrictions and conditions as the Board thinks fit.

- 5.2. **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised 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 for ratification.
- 5.3. **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, 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.
- 5.4. **Delegation to Officers** - Those functions of the Foundation Trust, which have not been retained as reserved by the Board or delegated to one of its Committees, shall be exercised on behalf of the Board by the Chief Executive. He shall determine which functions he will perform personally and shall nominate Officers to undertake remaining functions but still retain accountability for these to the Board.
- 5.5. The Chief Executive shall prepare a Scheme of Delegation identifying his proposals that shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board as indicated above.
- 5.6. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the executive Directors to provide information and advise the Board in accordance with any statutory requirements.

6. Committees

6.1. Appointment of Committees

- 6.1.1. The Board may appoint committees of the Board, consisting wholly or partly of Directors of the Foundation Trust or wholly of persons who are not Directors of the Foundation Trust.
- 6.1.2. A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Foundation Trust) or wholly of persons who are not members of the committee (whether or not they include Directors of the Foundation Trust).
- 6.1.3. The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board.

- 6.1.4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board) as the Board shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.1.5. Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 6.1.6. The Board shall approve the appointments to each of the committees that it has formally constituted. Where the Board determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.
- 6.1.7. Where the Foundation Trust is required to appoint persons to a committee, which is to operate independently of the Foundation Trust, such appointment shall be approved by the Board.

6.2. **Confidentiality**

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

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

7.1. **Declaration of Interests**

- 7.1.1. Directors are required to comply with the Foundation Trust's Standards of Business Conduct and to declare the nature and extent of any actual or potential interest and/or any direct or indirect interest (including but not limited to those set out below) held by a Director, their Spouse or Partner, or a family member (or any member of the Partner's family). All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.1.2. The following interests must be declared if held by a Director, or the spouse or Partner of a Director:
- a) Any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or

position held by a Director in any firm, company or business, which has or is likely to have a trading or commercial relationship with the Foundation Trust.

- b) Any interest in an organisation providing health and social care services to the NHS.
- c) A position of authority in a charity or Voluntary Organisation in the field of health and social care.
- d) Any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

7.1.3. These Standing Orders do not require a declaration of interest of which a Director is not aware or where the Director is not aware of the transaction or arrangement in question.

7.1.4. A Director need not declare an interest:

- a) If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- b) If, or to the extent that, the Directors are already aware of it;
- c) If, or to the extent that, it concerns the terms of the Director's appointment that have been or are to be considered:
 - i. By a meeting of the Board of Directors; or
 - ii. By a committee of the Directors appointed for the purpose under the constitution.

7.1.5. If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair.

7.1.6. At the time Directors' interests are declared, they should be recorded in the Board minutes and entered on a Register of Interests of Directors to be maintained by the Company Secretary. Any changes in interests should be declared at the next Board meeting following the change occurring.

7.1.7. Board members' Directorships of companies likely or possibly seeking to do business with the Foundation Trust should be published in the Foundation Trust's annual report.

7.1.8. During the course of a Board meeting, if a conflict of interest is established in accordance with this Standing Order, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. He shall not be entitled to vote on the issue in respect of which the conflict of interest has been established (and if by inadvertence they do remain and vote, their vote shall not be counted).

7.1.9. Any Director who fails to disclose any interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a Non-Executive Director) by three quarters of the Council of Governors) in accordance with Annex 6.

7.2. Register of Interests

7.2.1. The Company Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all Directorships and other interests that have been declared by both executive and non-executive Directors.

7.2.2. Details of the Register will be kept up to date and reviewed annually.

7.2.3. The Register will be available to the public.

8. Disability of Directors in Proceedings on Account of Pecuniary Interest

8.1. Subject to the following provisions of this Standing Order, if the Chair or a Director of the Foundation Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, he 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.

8.2. The Board shall exclude the Chair or a Director from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

8.3. The Board, as it may think fit, may remove any disability imposed by this Standing Order in any case in which it appears to the Board that, in the interests of the National Health Service, the disability shall be removed. Such action shall have the support of at least two-thirds of the Directors present at the meeting (including two executive and two non-executive Directors).

8.4. Any remuneration, compensation or allowances payable to a Director of the Foundation Trust by virtue of paragraph 11 of Schedule 4 to the NHS Act 2006 shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.5. For the purpose of this Standing Order the Chair or a Director shall be treated, subject to paragraphs 8.3 and 8.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (a) he, or his 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) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and

in the case of persons living together the interest of one Partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

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

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

8.7. 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 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 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 her duty to disclose his/her interest.

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

9. Compliance - Other Matters

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

10. Resolution of Disputes with Council of Governors

- 10.1. Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.
- 10.2. The Chair, or Deputy Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 10.3. Failing resolution under 10.2 above, then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and

agenda paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

- 10.5. The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.2 above shall be repeated.
- 10.6. If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 10.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and Board accordingly.
- 10.7. On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.8. On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9. Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Foundation Trust is not meeting the terms of its constitution or failed to comply with the NHS Act 2006.

11. Notification to the Council of Governors

The Board shall notify the Council of Governors of any major changes in the circumstances of the Foundation Trust, which have made or could lead to a substantial change to its financial well-being, healthcare delivery performance, or reputation and standing.

12. Validity of actions

No defect or deficiency in the appointment or composition of the Board of Directors shall affect the validity of any action taken by the Board of Directors.

13. Board Performance

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

ANNEX 9 – ADDITIONAL PROVISIONS – MEMBERS

(Paragraphs 4 and 8.4)

1. ELIGIBILITY FOR AND DISQUALIFICATION FROM MEMBERSHIP

An individual shall not be eligible for Membership of the Trust if:

- 1.1.1 he is under 11 years of age;
- 1.1.2 within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer;
- 1.1.3 he fails or ceases to fulfill the criteria for Membership of any of the constituencies;
- 1.1.4 he was formerly employed by the Trust and was dismissed for gross misconduct;
- 1.1.5 he was formerly employed by the Trust and in the preceding two years was lawfully dismissed other than by reason of redundancy;
- 1.1.6 he is included on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and their conviction is not spent under the Rehabilitation of Offenders Act 1974; or
- 1.1.7 he has been identified as a vexatious complainant in the reasonable opinion of the Trust or has been excluded from treatment at any of the Trust's Hospitals due to unacceptable behaviour. The eligibility for membership in such cases shall take into account the views of the Council of Governors.

2. TERMINATION OF MEMBERSHIP

- 2.1 A member shall cease to be a member if:
 - 2.1.1 he resigns by notice to the Company Secretary or Membership Manager;
 - 2.1.2 he dies;

- 2.1.3 he is expelled from membership under this Constitution;
 - 2.1.4 he ceases to be entitled under this constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency;
 - 2.1.5 it appears to the Company Secretary or Membership Manager that he no longer wishes to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Council of Governors, he fails to demonstrate that he wishes to continue to be a member of the Foundation Trust.
- 2.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.
- 2.2.1 Any member may complain to the Company Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.
 - 2.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - 2.2.2.1 dismiss the complaint and take no further action; or
 - 2.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members' meetings and vote under this constitution;
 - 2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
 - 2.2.3 If a resolution to expel a member is to be considered at a 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.
 - 2.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
 - 2.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

- 2.3 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.
- 2.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a meeting of the Council of Governors.

3. **MEMBERS' MEETINGS**

- 3.1 The Foundation Trust is to hold a members' meeting (called the Annual Members' meeting) within nine months of the end of each financial year.
- 3.2 All members' meetings other than annual meetings are called special members' meetings.
- 3.3 Members' meetings are open to the public. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members' meeting.
- 3.4 All members' meetings are to be convened by the Company Secretary by order of the Council of Governors.
- 3.5 The Council of Governors may decide where a members' meeting is to be held and may also for the benefit of members:
 - 3.5.1 arrange for the annual members' meeting to be held in different venues each year; and
 - 3.5.2 make provisions for a members' meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 3.6 At the Annual Members' meeting:
 - 3.6.1 the Board of Directors shall present to the members:
 - 3.6.1.1 the annual accounts;
 - 3.6.1.2 any report of the auditor on the annual accounts;
 - 3.6.1.3 the annual report; and
 - 3.6.1.4 forward planning information for the next Financial Year

- 3.6.2 the Council of Governors shall present to the members a report on:
 - 3.6.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
 - 3.6.2.2 the progress of the membership strategy; and
 - 3.6.2.3 any proposed changes to the policy for the composition of the Council of Governors
- 3.6.3 the results of any election, appointment of any Appointed Governors and the appointment of any non-executive Directors will be announced.
- 3.7 Notice of a members' meeting is to be given:
 - 3.7.1 by notice to all members;
 - 3.7.2 by notice on the Foundation Trust's websiteat least 14 clear days before the date of the meeting.
- 3.8 The notice must:
 - 3.8.1 be given to the Council of Governors and the Board of Directors, and to the auditor;
 - 3.8.2 state whether the meeting is an annual or special members' meeting;
 - 3.8.3 give the time, date and place of the meeting; and
 - 3.8.4 indicate the business to be dealt with at the meeting.
- 3.9 Before a members' meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
- 3.10 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 3.11 It is the responsibility of the Council of Governors, the Chair of the meeting and the Company Secretary to ensure that at any members' meeting:
 - 3.11.1 the issues to be decided are clearly explained; and

- 3.11.2 sufficient information is provided to members to enable rational discussion to take place.
- 3.12 The Chair of the Foundation Trust, or in their absence the Deputy Chair of the Board of Directors, or in their absence the Lead Governor of the Council of Governors, shall act as chair at all members' meetings of the Foundation Trust. If neither the Chair nor the Deputy Chair of the Board of Directors nor the Lead Governor of the Council of Governors is present, the members of the Council of Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act they shall be chair.
- 3.13 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.
- 3.14 A resolution put to the vote at a members' meeting shall be decided upon by a poll.
- 3.15 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second and casting vote.
- 3.16 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.

7. OTHER DISPUTES

- 7.1 Where an individual is held by the Foundation Trust to be ineligible and/or disqualified from Membership of the Foundation Trust and disputes the Foundation Trust's decision in this respect, the matter shall be referred to the Company Secretary (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.
 - 7.1.1 The Company Secretary (or the nominated representative) shall:
 - 7.1.1.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any,

as the Company Secretary considers appropriate;

7.1.1.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which she has considered; and

7.1.1.3 communicate the decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

7.1.2 If the Member is aggrieved of the decision of the Company Secretary pursuant to paragraph 7.1.1 above, he may appeal in writing to the Council of Governors within 14 days of the Company Secretary's decision. The Council of Governors' decision is to be final

Constitution

Version Control

Document History

Date	Version	Changes
1/7/07	Vers 1.0	Final version on date of authorisation
1/12/08	Vers 1.1	Nominations Committee Membership, Insurance arrangements
5/5/09	Vers 1.2	Authority to approve Constitutional amendments passed from Members to Governors.
24/05/10	Vers 1.3	Constitution amendments approved by Assembly of Governors – removal of appendices to Governor and Board of Directors Standing Orders and other amendments.
16/04/12	Vers 1.4	Constitution amendments approved by Assembly of Governors – changes to tenure of Governor to 9 years maximum
27/09/12	Vers. 1.5	Constitution amendments approved by Council of Governors - Changes to title of Assembly and relevant changes re Private Patient Cap
28/11/12	Vers 1.6/1.7	Constitution amendments approved by Board of Directors – changes following review by joint working group (including changes to reflect the Health and Social Care Act 2012, the staff and members constituencies and the composition of the Council of Governors)
12/12/12	Vers 1.6/1.7	Constitution amendments approved by Council of Governors – changes following review by joint working group (including changes to reflect the Health and Social Care Act 2012, the staff and members constituencies and the composition of the Council of Governors)
08/01/13	Vers 1.6/1.7	Constitution amendments approved by the Members – changes following review by joint working group requiring members approval (changes to the staff and members constituencies and changes to the composition of the Council of Governors)
13/6/13	Vers 1.8	Constitution amendments approved by BoD (29.5.13) and CoG (12.6.13) following recommendation by Joint Working Group (inclusion of definition of significant transactions and deletion of two Governor seats appointed by FT Partnership Steering Group)

Effective Dates (with details of Monitor approval where applicable)

Date	Version	Name	Title
1/7/07	Vers 1.0	Monitor	Independent Regulator
1/12/08	Vers 1.1	Monitor	Independent Regulator
5/5/09	Vers 1.2	Monitor	Independent Regulator
29/10/10	Vers 1.3	Monitor	Independent Regulator
16/04/12	Vers 1.4	Monitor	Independent Regulator
09/10/12	Vers 1.5	Monitor	Independent Regulator
22/01/13	Vers 1.6	Monitor	Independent Regulator
01/04/13	Vers 1.7	N/A	N/A
13/06/13	Vers 1.8	N/A	N/A

Note: from 1 April 2013 Monitor's functions do not include a power or duty to approve amendments to the constitution.

Distribution

Date	Version	Distribution
1/7/07	Vers 1.0	Website / Intranet / Membership Office / Board / Governors / On demand
1/12/08	Vers 1.1	Website / Intranet / Membership Office / Board / Governors / On demand
5/5/09	Vers 1.2	Website / Intranet / Membership Office / Board / Governors / On demand
29/10/10	Vers 1.3	Website / Intranet / Membership Office / Board / Governors / On demand
16/04/12	Vers 1.4	Website / Intranet / Membership Office / Board / Governors / On demand
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22/01/13	Vers 1.6	Website / Intranet / Membership Office / On Demand
22/4/13	Vers 1.7	Monitor / Website / Intranet / Membership Office / On Demand
3/7/13	Vers 1.8	Monitor / Website / Intranet / Membership Office / On Demand

Document Owner	Company Secretary
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Review Date

Review Date