

**SURREY AND BORDERS PARTNERSHIP NHS
FOUNDATION TRUST
CONSTITUTION**

Approved by Council of Governors and Board of
Directors on 1st January 2020

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1 NAME

- 1.1 The name of the Trust is to be “Surrey & Borders Partnership NHS Foundation Trust”.

2 PRINCIPAL PURPOSE

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

3 POWERS

- 3.1 The Trust is to have all the powers of an NHS Foundation Trust set out in the 2006 Act.
- 3.2 In the exercise of its powers the Trust shall have regard to the core principles of the NHS and the Trust as set out in Appendix 1 of Annex 9.
- 3.3 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.4 Subject to paragraph 3.5 below, any of these powers may be delegated to a committee of Directors or to an executive Director.
- 3.5 Where the Trust is exercising the functions of the managers referred to in Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an executive Director of the Board of Directors nor an employee of the Trust.

4 OTHER PURPOSES

- 4.1 Without prejudice to the Trust's principal purpose, the further purpose of the Trust is to provide goods and services, including education, training and research and other facilities for purposes related to the provision of healthcare, in accordance with its statutory powers and duties.
- 4.2 The Trust may carry out research in connection with the provision of healthcare and make facilities and staff available for the purposes of education, training or research carried on by others.

5 MEMBERSHIP AND CONSTITUENCIES

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

5.1.1 a Public Constituency; or

5.1.2 the Staff Constituency; or

5.1.3 the People Who Use the Trust's Services Constituency.

6 APPLICATION FOR MEMBERSHIP

6.1 An individual who is eligible to become a Member of the Trust may become a Member in accordance with paragraphs 7, 8 and 9 below.

7 PUBLIC CONSTITUENCY

7.1 Subject to the provisions of paragraphs 1 and 2 of Appendix 2 to Annex 9, an individual who lives in an area specified in column 2 of Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.

7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the "Public Constituency".

7.3 The minimum number of Members in each Public Constituency is specified in column 3 of Annex 1.

7.4 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.

7.5 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

8 STAFF CONSTITUENCY

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

8.1.1 The individual is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 The individual has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 Individuals who are employed by a designated Trust Subcontractor or individuals who are designated Trust Subcontractors and in both cases who exercise functions for the purposes of the Trust may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

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

- 8.4 The Staff Constituency shall be divided into six groups of individuals who are eligible for membership of the Staff Constituency, each group of individuals being specified within Annex 2 and referred to as a class within the Staff Constituency.
- 8.5 The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.
- 8.6 An individual who is eligible to become a Member of the Staff Constituency under paragraph 8.1 above and who is invited by either the Applicant NHS Trust or (as the case may be) the Trust to become a Member of the Staff Constituency shall become a Member of the Trust as a Member of the Staff Constituency without an application being made unless he informs the Applicant NHS Trust (or as the case may be) the Trust that he does not wish to do so.

9 PEOPLE WHO USE THE TRUST'S SERVICES CONSTITUENCY

- 9.1 An individual:
- 9.1.1 whose name is recorded as a person who uses the Trust's Services on the Trust's administration system or another record maintained by the Trust for the purpose of identifying people who use the Trust's Services and who has, within the period specified below, used the Trust's services; or
 - 9.1.2 who has, within the period specified below, attended the Trust as the carer of a person who uses the Trust's services,
- may become or continue as a Member of the Trust.
- 9.2 The period referred to in paragraph 9.1 above shall be the period of five years immediately preceding the date of an application by a person who uses the Trust's services or by a carer of a person who uses the Trust's services to become a Member of the Trust. For the purposes of this paragraph, use of the Trust's services or attendance at the Trust, as the case may be, includes use of services provided by, or attendance at, the Trust's predecessor organisations Surrey Oaklands NHS Trust, Surrey Hampshire Borders NHS Trust and North West Surrey Mental Health Partnership Trust.
- 9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the "People Who Use the Trust's Services' Constituency".
- 9.4 The People Who Use the Trust's Services Constituency shall be divided into three groups of individuals who are eligible for membership of the People Who Use the Trust's Services Constituency, each group of individuals being specified within Annex 3 and being referred to as a class within the People Who Use the Trust's Services Constituency.
- 9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a Voluntary Organisation, or as a Volunteer for a Voluntary Organisation, does not come within the category of those who qualify for membership of the People Who Use the Trust's Services' Constituency.
- 9.6 The minimum number of Members in each class of the People Who Use the Trust's Services' Constituency is specified in Annex 3.

- 9.7 Any individual who is eligible to become a Member of the People Who Use the Trust's Services' Constituency shall become a Member upon entry to the membership register pursuant to an application by them.
- 9.8 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered into the Trust's register of Members.
- 9.9 The constituency and, where applicable, the class to be specified:
- 9.9.1 if the individual is eligible to be a Member of any Public Constituency, is that constituency,
- 9.9.2 otherwise, is the People Who Use the Trust's Services Constituency and, where applicable, the class of which the individual is eligible to become a Member.

10 RESTRICTION ON MEMBERSHIP

- 10.1 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.
- 10.2 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.
- 10.3 A person may not be a Member of the Trust if they are under 14 years of age.
- 10.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Appendix 2 of Annex 9 ("Further Provisions").

11 COUNCIL OF GOVERNORS – COMPOSITION

- 11.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 11.2 The composition of the Council of Governors is specified in Annex 4.
- 11.3 The Elected Governors shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annexes 1, 2 and 3.

12 COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 12.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time, and attached at Annex 5.
- 12.2 A variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.
- 12.3 An election, if contested, shall be by secret ballot.
- 12.4 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections the individual has

made a declaration in the specified form setting out the particulars of their qualification to vote or stand as a Member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

13 COUNCIL OF GOVERNORS - TENURE

13.1 Elected Governors

- 13.1.1 An Elected Governor may hold office for a period of up to 3 years.
- 13.1.2 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.
- 13.1.3 An Elected Governor shall be eligible for re-election at the end of his term.
- 13.1.4 An Elected Governor may hold office for a maximum of 9 years in total. Once an Elected Governor has served 9 years in total, they are not eligible to stand as an Elected Governor again until a further 9 years has elapsed, subject always to clause 14 (Council of Governors – Disqualification and Removal).

13.2 Appointed Governors

- 13.2.1 An Appointed Governor shall hold office for a period of 3 years.
- 13.2.2 An Appointed Governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of him by notice in writing to the Secretary.
- 13.2.3 An Appointed Governor shall be eligible for re-appointment at the end of his term.
- 13.2.4 An Appointed Governor may hold office for a maximum of 9 years in total. Once an Appointed Governor has served 9 years in total, they are not eligible to stand as an Appointed Governor again until a further 9 years has elapsed, subject always to clause 14 (Council of Governors – Disqualification and Removal).

14 COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

14.1 The following may not become or continue as a Governor:

- 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 14.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it;
- 14.1.3 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 14.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on the individual;
- 14.1.5 a person who fulfils any of the criteria set out in Appendix 1 of Annex 6.

- 14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.3 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 14.4 If a Governor fails to attend three meetings of the Council of Governors in any 12 month period, their tenure of office is to be terminated immediately unless the Chairman, Lead Governor (or Deputy Lead Governor, in the absence of the Lead Governor) and the Secretary (who will convene to discuss the absence) are satisfied that:
 - 14.4.1 the absences were due to a reasonable cause; and
 - 14.4.2 the individual will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 14.5 If a Governor is alleged to have acted in a manner inconsistent with:
 - 14.5.1 the Vision and Values of the Trust and the core principles of the NHS, as set out in Appendix 1 of Annex 9; or
 - 14.5.2 the Authorisation; or
 - 14.5.3 the Standing Orders for the Practice and Procedure of the Council of Governors, as set out in Annex 7 ("the Standing Orders for Governors"); or
 - 14.5.4 the Governor's Code of Conduct; or
 - 14.5.5 except as a result of a genuine mistake or where reasonable cause can be shown or where the individual can demonstrate that they have gained no personal benefit, the individual has failed to declare an interest as required by this Constitution or the Standing Orders for Governors, or they have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or the Standing Orders for Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect; and

the process set out at Appendix 2 of the Standing Order for Governors shall be followed.

- 14.6 A Governor whose office is terminated under paragraph 14.5 shall not be eligible to stand for re-election or re-appointment to the Council of Governors.
- 14.7 Subject to paragraph 14.6, a Governor whose office is terminated under this paragraph 14 shall not be eligible to stand for re-election or re-appointment to the Council of Governors for three years after their removal from office or the date upon which any appeal against their removal from office is disposed of, whichever is later.

15 COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 15.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below) or, in their absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors and the person chairing the meeting shall have a casting vote.

- 15.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.
- 15.3 The Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance).

16 COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 16.1 The general duties of the Council of Governors are:
- 16.1.1 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors, and
 - 16.1.2 to represent the interests of the Members of the Trust as a whole and the members of the public.
- 16.2 The Trust must take steps to ensure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

17 COUNCIL OF GOVERNORS – STANDING ORDERS

- 17.1 The Standing Orders for Governors, as may be varied from time to time, are attached at Annex 7.

18 COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

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

19 COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

- 19.1 In this paragraph 19, the 'Panel' means a panel of persons appointed by NHS Improvement to which a Governor of the Trust may refer a question as to whether the Trust has failed or is failing:
- 19.1.1 to act in accordance with its Constitution, or
 - 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

20 COUNCIL OF GOVERNORS – TRAVEL AND OTHER EXPENSES

- 20.1 The Trust may pay travelling and other costs and expenses to Governors at such rates as the Trust decides from time to time.

21 COUNCIL OF GOVERNORS – FURTHER PROVISIONS

- 21.1 Further provisions with respect to the Council of Governors are set out in Annex 6, these include:
- 21.1.1 Eligibility to be on the Council of Governors;
 - 21.1.2 Council of Governors: Objectives;
 - 21.1.3 Roles and responsibilities of Governors;
 - 21.1.4 Remuneration;
 - 21.1.5 Vacancies;
 - 21.1.6 Meetings; and
 - 21.1.7 Committees and sub-committees.

22 BOARD OF DIRECTORS – COMPOSITION

- 22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors.
- 22.2 The Board of Directors is to comprise:
- 22.2.1 a non-executive Chairman;
 - 22.2.2 6 (six) other non-executive Directors; and
 - 22.2.3 6 (six) executive Directors.
- 22.3 One of the executive Directors shall be the Chief Executive.
- 22.4 The Chief Executive shall be the Accounting Officer.
- 22.5 One of the executive Directors shall be the Finance Director.
- 22.6 One of the executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983).
- 22.7 One of the executive Directors is to be a registered nurse (within the meaning of the Nurse and Midwifery Order 2001 (SI 2002/253)).
- 22.8 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

22.9 The post of an executive Director may be held by two individuals on a job share basis (provided that the executive positions of doctor (paragraph 22.6 above) and nurse (paragraph 22.7) cannot be shared between the two professions).

22.10 Where such an arrangement is in force, both individuals shall be able to attend a meeting of the Board of Directors provided that at any meeting of the Board of Directors they may only count as one individual for the purposes of the quorum of the meeting and may only exercise one vote between. Where the two individuals disagree as to how to vote at a meeting of the Board of Directors, then no vote shall be cast.

23 BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

23.1 Subject to the provisions of paragraph 26.3 below, a person may be appointed as a non-executive Director only if:

23.1.1 The individual is a Member of the Public Constituency; or

23.1.2 The individual is a Member of the People Who Use the Trust's Services Constituency; and

23.1.3 The individual is not disqualified by virtue of paragraph 31 below.

24 BOARD OF DIRECTORS – GENERAL DUTY

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

25 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS

25.1 The Council of Governors at a meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other non-executive Directors.

25.2 Removal of the Chairman or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

25.3 The initial Chairman and the initial non-executive Directors are to be appointed in accordance with paragraph 26 below.

26 BOARD OF DIRECTORS – APPOINTMENT OF INITIAL CHAIRMAN AND INITIAL OTHER NON-EXECUTIVE DIRECTORS

26.1 The chairman of the Applicant NHS Trust shall be appointed as the initial Chairman of the Trust if the individual wishes to be appointed.

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

26.3 The criteria for qualification for appointment as a non-executive Director set out in paragraph 23 above (other than disqualification by virtue of paragraph 31 below) do not

apply to the appointment of the initial Chairman and the initial other non-executive Directors in accordance with the procedures set out in this paragraph.

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

27 BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIRMAN

- 27.1 The Council of Governors at a general meeting of the Council of Governors shall either appoint one of the non-executive Directors as a Deputy Chairman or decide not to appoint a Deputy Chairman.
- 27.2 During the period that the position of Deputy Chairman is being held vacant, the Council of Governors must review the decision not to appoint a Deputy Chairman on an annual basis at a general meeting of the Council of Governors.

28 BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

- 28.1 The non-executive Directors shall appoint or remove the Chief Executive.
- 28.2 Subject to the provisions of paragraph 29 below, the appointment of the Chief Executive is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.
- 28.3 The initial Chief Executive is to be appointed in accordance with paragraph 29 below.
- 28.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors.

29 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF INITIAL CHIEF EXECUTIVE

- 29.1 The chief officer of the Applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if the individual wishes to be appointed.
- 29.2 The appointment of the chief officer of the Applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

30 BOARD OF DIRECTORS – MEETINGS

- 30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting of the Board of Directors for special reasons by resolution of the Board of Directors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for the other special reasons stated in the resolution and arising from the business or nature of the proceedings.

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

31 BOARD OF DIRECTORS – DISQUALIFICATION

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

- 31.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 31.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 31.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 31.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them;
- 31.1.5 a person whose tenure of office as a chairman or member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the health service;
- 31.1.6 a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had his name included in such a list;
- 31.1.7 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 31.1.8 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 31.1.9 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 31.1.10 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 31.1.11 a person who is the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register.

32 BOARD OF DIRECTORS – STANDING ORDERS

- 32.1 The standing orders for the practice and procedure of the Board of Directors ("Standing Orders for Directors"), as may be varied from time to time, are attached at Annex 8.

33 BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

- 33.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 33.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust (a "Conflict").
 - 33.1.2 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.
- 33.2 The duty referred to in sub-paragraph 33.1.1 above is not infringed if –
- 33.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 33.2.2 the matter has been authorised in accordance with the Constitution.
- 33.3 The duty referred to in paragraph 33.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4 In paragraph 33.1.2 above, "third party" means a person other than –
- 33.4.1 the Trust, or
 - 33.4.2 a person acting on its behalf.
- 33.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 33.9 A Director need not declare an interest –
- 33.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 33.9.2 if, or to the extent that, the Directors are already aware of it;
 - 33.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - (a) by a meeting of the Board of Directors, or
 - (b) by a committee of the Directors appointed for the purpose under the Constitution.
- 33.10 A matter shall have been authorised for the purposes of paragraph 33.2.2 above if:
- 33.10.1 the Directors, in accordance with the requirements set out in this paragraph 33.10, authorise any matter or situation proposed to them by any Director which

would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 33.1.1 above to avoid Conflicts:

- 33.10.2 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution;
 - 33.10.3 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interest Director; and
 - 33.10.4 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
- 33.11 Any authorisation of a Conflict under paragraph 33.10 above may (whether at the time of giving the authorisation or subsequently):
- 33.11.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
 - 33.11.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 33.11.3 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 33.11.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
 - 33.11.5 provide that, where the Interested Director obtains, or has obtained (through their involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, they will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and
 - 33.11.6 permit the Interested Director to absent themselves from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.
- 33.12 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.
- 33.13 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 33.14 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which they derive from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

34 BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive Directors.
- 34.2 The Trust shall establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive Directors.

35 REGISTERS

- 35.1 The Trust shall have:
- 35.1.1 a register of Members showing, in respect of each Member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
 - 35.1.2 a register of members of the Council of Governors;
 - 35.1.3 a register of interests of the members of the Council of Governors;
 - 35.1.4 a register of Directors;
 - 35.1.5 a register of interests of the Directors; and
 - 35.1.6 a register of Trust Subcontractors.
- 35.2 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 28 days of receipt.

36 ADMISSION TO AND REMOVAL FROM THE REGISTERS

36.1 Register of Members

- 36.1.1 Subject to paragraph 8.6 above, Members must complete and sign an application in the form prescribed by the Secretary.
- 36.1.2 The Secretary shall maintain the register in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraphs 37 and 38 below. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

36.2 Register of Governors

- 36.2.1 The register shall list the names of Governors, their category of membership of the Council of Governors (Public Governor, Staff Governor, People Who Use the

Trust's Services' Governor, Local Authority Governor, Other Partnership Governor) and an address through which they may be contacted which may be the Secretary.

36.3 Register of interests of the Governors

- 36.3.1 The register shall contain the names of each Governor, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Governors.

36.4 Register of Directors

- 36.4.1 The register shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.

36.5 Register of interests of Directors

- 36.5.1 The register shall contain the names of each Director, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Directors.

36.6 Register of Trust Subcontractors

- 36.6.1 The register shall contain the names of each Trust Subcontractor designated by the Trust for the purposes of membership of the Staff Constituency.

37 REGISTERS – INSPECTION AND COPIES

- 37.1 The Trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below in paragraphs 37.2 to 37.4 below or as otherwise prescribed by regulations.
- 37.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the People Who Use the Trust's Services' Constituency or, if the Member so requests, any other Member of the Trust.
- 37.3 So far as the registers are required to be made available:
- 37.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 37.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 37.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

38 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

- 38.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 38.1.1 a copy of the Constitution;
- 38.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and

- 38.1.3 a copy of the latest Annual Report;
- 38.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 38.2.1 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;
 - 38.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 38.2.4 a copy of any draft report published, or any statement provided under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS Improvement's decision), 65KB (secretary of State's response to NHS Improvement'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;
 - 38.2.5 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 38.2.6 a copy of any final report published under section 65I (administrator's final report)
 - 38.2.7 a copy of any statement published under 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;
 - 38.2.8 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the above documents listed in paragraphs 38.1.1 to 38.1.3 above is to be provided with a copy or extract.
- 38.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

39 AUDITOR

- 39.1 The Trust is to have an Auditor.
- 39.2 The Council of Governors shall appoint or remove the Trust's Auditor at a general meeting of the Council of Governors.
- 39.3 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS Improvement on standards, procedures and techniques to be adopted.

40 AUDIT COMMITTEE

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

41 ACCOUNTS

- 41.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 41.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 41.3 The accounts are to be audited by the Auditor.
- 41.4 The Trust shall prepare in respect of each Annual Accounts in such form as NHS Improvement may, with the approval of the Secretary of State, direct.
- 41.5 The functions of the Trust referred to in this paragraph 41 shall be delegated to the Accounting Officer.

42 ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

- 42.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.
- 42.2 The Trust shall give the Forward Plan in respect of each Financial Year to NHS Improvement.
- 42.3 The Forward Plan shall be prepared by the Board of Directors.
- 42.4 In preparing the Forward Plan, the Board of Directors shall have regard to the views of the Council of Governors.
- 42.5 Each Forward Plan must include information about:
 - 42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
 - 42.5.2 the income it expects to receive from doing so
- 42.6 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 above the Council of Governors must –
 - 42.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
 - 42.6.2 notify the Directors of the Trust of its determination
- 42.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve its implementation.

43 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE COUNCIL OF GOVERNORS AND MEMBERS

- 43.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 43.1.1 the Annual Accounts;

43.1.2 any report of the Auditor on them; and

43.1.3 the Annual Report.

43.2 The documents listed in paragraph 43.1 above shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 43.1 above with an Annual Members' Meeting.

44 ANNUAL MEMBERS' MEETING

44.1 The Trust shall hold an annual meeting of its Members ("Annual Members' Meeting"). The Annual Members' Meeting shall be open to members of the public.

45 INSTRUMENTS

45.1 The Trust shall have a seal.

45.2 The seal shall not be affixed except under the authority of the Board of Directors as set out in the Standing Orders for Directors.

46 AMENDMENT OF THE CONSTITUTION

46.1 The Trust may make amendment of its Constitution only if:

46.1.1 more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve the amendments, and

46.1.2 more than half of the members of the Board of Directors of the Trust present and voting at a meeting of the Board of Directors approve the amendments.

46.2 Amendments made under paragraph 46.1 above 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.

46.3 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 Trust):

46.3.1 at least one Governor must attend the next Annual Members' Meeting and present the amendment, and

46.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.

46.4 If more than half of the Members present and voting at the Annual Members' Meeting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

46.5 Amendments by the Trust of its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement'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.

47 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 47.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors at a meeting of the Council of Governors.
- 47.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

48 INTERPRETATION AND DEFINITIONS

- 48.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 48.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made.
- 48.3 References to legislation include all regulations, orders, statutory guidance or directives.
- 48.4 Headings are for ease of reference only and are not to affect interpretation.
- 48.5 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 48.6 In this Constitution:

"2006 Act" means the National Health Service Act 2006 (as amended);

"2012 Act" means the Health and Social Care Act 2012;

"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;

"Annual Accounts" means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 of the 2006 Act;

"Annual Members' Meeting" has the meaning ascribed to it in paragraph 40.1 of this Constitution;

"Annual Report" means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Applicant NHS Trust" means Surrey & Borders Partnership NHS Trust which has made the application to become the Trust;

"Appointed Governors" means a Local Authority Governor or an Other Partnership Governor;

"Area of the Trust" means the area, consisting of all the areas specified in Annex 1, as an area for a Public Constituency;

"Audit Committee" means a committee of the Board of Directors as established pursuant to paragraph 36 of this Constitution;

"Auditor" means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 35 of this Constitution;

"Authorisation" means the authorisation issued to the Trust by NHS Improvement under section 35 of the 2006 Act;

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

"Chairman" means the Chairman of the Trust;

"Chief Executive" means the Chief Executive of the Trust;

"Constitution" means this Constitution together with the annexes and appendices attached hereto;

"Council of Governors" means the Council of Governors as constituted in this Constitution, which has the same meaning as the "Council of Governors" in paragraph 7 of Schedule 7 to the 2006 Act;

"Deputy Chairman" means any Deputy Chairman of the Trust appointed in accordance with paragraph 27 of this Constitution;

"Deputy Lead Governor" means such Governor as may be appointed in accordance with SO 5 of the Standing Orders for Governors;

"Director" means a member of the Board of Directors, and includes both executive and non-executive Directors;

"Director's Code of Conduct" means the Code of Conduct for Directors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to;

"Dispute Resolution Procedure" means the dispute resolution procedure set out in paragraph 2 of Appendix 3 of Annex 9;

"Elected Governors" means a Public Governor and/or a Staff Governor and/or a People Who Use the Trust's Services' Governor, as the case may be;

"Finance Director" means the Finance Director of the Trust;

"Financial Year" means:

- (a) a period beginning with the date on which the Trust is authorised as an NHS Foundation Trust and ending with the next 31 March; and
- (b) each successive period of twelve months beginning with 1 April;

"Forward Plan" means the document prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Governor" means a member of the Council of Governors and includes both Appointed Governors and Elected Governors;

"Governor's Code of Conduct" means the Code of Conduct for Governors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Council of Governors, which all Governors must subscribe to;

"Health Service Body" shall have the meaning ascribed to it in Section 65(1) of the 2006 Act;

"Hospital" means those premises of the Surrey & Borders Partnership NHS Trust and all associated hospitals and facilities at which the Trust provides and/or manages the provision of goods and/or services;

"Lead Governor" means such Governor as may be appointed in accordance with SO 5 of the Standing Orders for Governors;

"Licence" means the licence granted to the Applicant Trust under Section 81 of the 2012 Act;

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

"Local Authority Partnership Agreement" means an agreement made under section 75 of the 2006 Act;

"Member" means a member of the Trust;

"Model Rules for Elections" means the election rules set out in Annex 5 of this Constitution;

"Monitor" means the body corporate known as Monitor as provided for by section 61 of the 2012 Act and now forms part of NHS Improvement;

"NHS Improvement" means the body corporate statutorily established as Monitor pursuant to Section 61 of the 2012 Act exercising its functions under the name of NHS Improvement and/or NHS I/E;

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

"Other Partnership Governor" means a member of the Council of Governors other than: a Public Governor; Staff Governor; People Who Use the Trust's Services' Governor; or Local Authority Governor;

"Other Partnership Organisation" means an organisation that may appoint Other Partnership Governors and which is listed in paragraph 4.2 of Annex 4 of this Constitution;

"People Who Use the Trust's Services' Constituency" has the meaning ascribed to it in paragraph 9.3 of this Constitution, and the references in this Constitution to people who use the Trust's services and form the People Who Use the Trust's Services' Constituency shall be construed as "patients" for the purposes of the 2006 Act;

"People Who Use the Trust's Services' Governor" means a member of the Council of Governors elected by the Members of one of the People Who Use the Trust's Services' Constituencies;

"Public Constituency" has the meaning ascribed to it in paragraph 7.2 of this Constitution;

"Public Governor" means a member of the Council of Governors elected by the Members of one of the Public Constituencies;

"Regulatory Framework" means the 2006 Act, the Constitution and the Licence;

"Replacement Governor" has the meaning ascribed to it in paragraph 2.3 of Appendix 4 of Annex 6 of this Constitution;

"Reserve Governor" has the meaning ascribed to it in paragraph 2.1 of Appendix 4 of Annex 6 of this Constitution;

"Secretary" means the Secretary of the Trust or any other person appointed to perform the roles and responsibilities of the Secretary as set out in Appendix 4 of Annex 9 of this Constitution and includes a joint, assistant or deputy secretary;

"Sex Offenders Order" means a Sexual Offences Preventative Order made under section 104 of the Sexual Offences Act 2003, or a Risk of Sexual Harm Order made under section 123 of the Sexual Offences Act 2003;

"Sex Offenders Register" means the Register of Sex Offenders maintained under Part I of the Sex Offenders Act 1997 (as amended by the Sexual Offences Act 2003);

"Significant Transaction" has the meaning ascribed to it in Annex 10;

"Staff Constituency" has the meaning ascribed to it in paragraph 8.3 of this Constitution;

"Staff Governor" means a member of the Council of Governors elected by the Members of one of the Staff Constituencies;

"Standing Orders for Directors" means the Standing Orders for the Board of Directors referred to in Annex 8 of this Constitution;

"Standing Orders for Governors" means the Standing Orders for the Council of Governors referred to in Annex 7 of this Constitution;

"Trust" means Surrey & Borders Partnership NHS Foundation Trust;

"Trust Subcontractor" means any contractor of the Trust who exercises, and/or whose employees exercise, functions on behalf of the Trust pursuant to a contract between the contractor and the Trust where such contractors are approved by the Board of Directors and listed in the register maintained by the Secretary pursuant to paragraph 35.1.6 of this Constitution;

"Voluntary Organisation" means a body other than a public or local authority, the activities of which are not carried on for profit; and

"Volunteer" means a person who provides goods or services to the Applicant NHS Trust or (as the case may be) the Trust, but who is not employed to do so by the Applicant NHS Trust or (as the case may be) the Trust.

ANNEX 1 - THE PUBLIC CONSTITUENCIES

1 PUBLIC CONSTITUENCIES OF THE TRUST

1.1 Up to and including 30 April 2014, there shall be the following Public Constituencies:

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Surrey	The electoral area of Surrey County Council	20	6
Hampshire	The electoral area of Hampshire County Council	20	2
Other – Rest of England	The electoral areas of the rest of England	20	1
Totals	Minimum Membership	60	
	Public Governors		9

1.2 From 1 May 2014, there shall be the following Public Constituencies:

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
NW Surrey and SW Surrey	The electoral areas of Guildford Borough Council, Waverley Borough Council, Woking Borough Council, Surrey Heath Borough Council, Runnymede Borough Council and Spelthorne Borough Council	20	3
East and Mid Surrey	The electoral areas of Elmbridge Borough Council, Epsom and Ewell Borough Council, Mole Valley District Council, Reigate and Banstead Borough Council and Tandridge District Council	20	3
Hampshire and the rest of England	The electoral areas of Hampshire County Council and all electoral areas of the rest of England save for the electoral areas for NW Surrey and SW Surrey and East and Mid Surrey	20	2

Totals	Minimum Membership	60	
	Public Governors		8

- 1.3 Members of the Public Constituencies listed in paragraph 1.1 above shall be allocated by the Secretary to the new Public Constituencies.

ANNEX 2 - THE STAFF CONSTITUENCY

1 STAFF CONSTITUENCY OF THE TRUST

- 1.1 Up to and including 30 April 2014, there shall be the following classes within the Staff Constituencies:

NAME OF CLASS	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Medical and Dental	75	1
Qualified Nursing	75	1
Health and Social Care Assistants	75	2
Therapies	75	1
Social Work	75	1
Administrative, Managerial and Facilities	75	1
Total Minimum Membership	450	
Total Staff Governors		7

- 1.2 From 1 May 2014, there shall be the following classes within the Staff Constituencies:

NAME OF CLASS	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Medical and Dental	75	1
Qualified Nursing	75	1
Health and Social Care Assistants	75	1
Therapies	75	1
Social Work and other County Council employees	75	1
Administrative, Managerial and Facilities	75	1
Total Minimum Membership	450	
Total Staff Governors		6

1.3 From 1 January 2020, there shall be the following classes within the Staff Constituencies:

NAME OF CLASS	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Medical and Dental	75	1
Qualified Nursing	75	1
Health and Social Care Assistants	75	1
Therapies	75	1
Administrative, Managerial and Facilities	75	1
Total Minimum Membership	375	
Total Staff Governors		5

ANNEX 3 - THE PEOPLE WHO USE THE TRUST'S SERVICES' CONSTITUENCY

1 THE PEOPLE WHO USE THE TRUST'S SERVICES' CONSTITUENCY OF THE TRUST

- 1.1 Up to and including 30 April 2014, there shall be the following classes within the People Who Use the Trust's Services' Constituency:

NAME OF CLASS	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
People who use Learning Disability Services	20	2
People who use other Trust services	20	6
Carers and Families	20	4
Total Minimum Membership	60	
Total People Who Use the Trust's Services' Governors		12

- 1.2 From 1 May 2014, there shall be the following classes within the People Who Use the Trust's Services' Constituency:

NAME OF CLASS	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
People who use Learning Disability Services	20	2
People who use other Trust services	20	6
Carers and Families	20	3
Total Minimum Membership	60	
Total People Who Use the Trust's Services' Governors		11

ANNEX 4 - COMPOSITION OF COUNCIL OF GOVERNORS

1 The composition of the Council of Governors shall be as follows:

1.1 **9 Public Governors** up to and including 30 April 2014, elected by the following Public Constituencies:

- Surrey (6);
- Hampshire (2);
- Other- Rest of England (1)

and thereafter **8 Public Governors** elected by the following Public Constituencies:

- SW Surrey and NW Surrey (3);
- East and Mid Surrey (3);
- Hampshire and Rest of England (2);

1.2 **7 Staff Governors** up to and including 30 April 2014 elected by the following classes of the Staff Constituency:

- medical/dental (1);
- qualified nursing (1);
- health and social care assistant (2);
- therapies (1);
- social work (1); and
- administrative, managerial and facilities (1),

and thereafter, **6 Staff Governors** elected by the following classes of the Staff Constituency:

- medical/dental (1);
- qualified nursing (1);
- health and social care assistant (1);
- therapies (1);
- social work and other county council employees (1); and
- administrative, managerial and facilities (1);

and thereafter, **5 Staff Governors** elected by the following classes of the Staff Constituency:

- medical/dental (1);
- qualified nursing (1);
- health and social care assistant (1);
- therapies (1);
- administrative, managerial and facilities (1);

1.3 **12 People Who Use the Trust's Services Governors** up to and including 30 April 2014 elected by the following classes of the People who Use the Trust's Services' Constituency:

- People who use Learning Disability services (2);
- People who use other Trust service (6); and
- Carers and families (4),

and thereafter, **11 People Who Use the Trust's Services Governors** elected by the following classes of the People who Use the Trust's Services Constituency:

- People who use Learning Disability services (2);
- People who use other Trust service (6); and
- Carers and families (3);

1.4 **4 Local Authority Governors**; and

1.5 **3 Other Partnership Governors** up to and including 30 April 2014, **2 Other Partnership Governors from 1 May 2014** up to and including **1 January 2020** and thereafter **3 Other Partnership Governors**.

2 The number of Public Governors is to be more than half of the total membership of the Council of Governors.

3 The organisations currently specified as Other Partnership Organisations that may appoint members of the Council of Governors are set out in paragraph 4.2 below.

4 Appointed Governors

4.1 Local Authority Governors

- 2 representatives of Surrey County Council;
- 1 representative of Hampshire County Council; and
- 1 representative from one of the Borough Councils set out below who will be nominated by the Surrey County Council Chief Executive Officers Group to hold office as an Appointed Governor on behalf of the Borough Councils for a term in accordance with paragraph 13.2 of the Constitution:
 - Surrey Heath
 - Runnymede
 - Spelthorne
 - Woking
 - Elmbridge
 - Guildford
 - Waverley
 - Mole Valley
 - Epsom & Ewell

- Reigate & Banstead
- Tandridge

4.2 **Other Partnership Governors**

4.2.1 Up to and including 30 April 2013, the Council of Governors shall have **3 Partnership Governors** appointed as follows:

- 1 representative of Voluntary Sector who will be nominated by members of the Surrey Councils for Voluntary Action;
- 1 representative of Surrey Police; and
- 1 representative of South East Coast Ambulance Trust.

4.2.2 From 1 May 2014, the Council of Governors shall have **2 Partnership Governors** appointed as follows:

- 1 representative of Surrey Police; and
- 1 representative of Action for Carers.

4.2.3 From 1 January 2020, the Council of Governors shall have **1 additional Partnership Governor** appointed as follows:

- 1 representative who is a mental health social worker or other mental health social care worker engaged in the mental health social work team in the county of Surrey and nominated by Surrey County Council.

ANNEX 5 - THE MODEL RULES FOR ELECTIONS

Model Rules for Elections to the Council of Governors

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

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

14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

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

PART 5: CONTESTED ELECTIONS

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- 19. Poll to be taken by ballot**
- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.
- 20. The ballot paper**
- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

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

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

- (a) a postal address; and,
 - (b) the member's e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

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

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

24. Issue of voting information by returning officer

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

- (a) a ballot paper and ballot paper envelope,
 - (b) the ID declaration form (if required),
 - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
 - (d) a covering envelope;
- ("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a

touch-tone telephone (in these rules referred to as “the telephone voting facility”).

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the text message voting facility”).

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

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

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

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:

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

26.6

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

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

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

The poll

27. Eligibility to vote

27.1

An individual who becomes a member of the corporation on or before the closing date for the

receipt of nominations by candidates for the election, is eligible to vote in that election.

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

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

30. Lost voting information

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her

vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
 - (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
 - (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

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

- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
 - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
 - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
 - (c) place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (public and patient constituency)¹**
- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- (a) mark the ID declaration form “disqualified”,
 - (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
 - (c) place the ID declaration form in a separate packet.
- 39. De-duplication of votes**
- 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant

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

voter ID number; and

- 39.3 (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number
Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper “disqualified”,
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
 - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
 - (d) place the document or documents in a separate packet; and
 - (e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
 - (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
 - (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
 - (b) the ID declaration forms, if required,
 - (c) the list of spoilt ballot papers and the list of spoilt text message votes,
 - (d) the list of lost ballot documents,
 - (e) the list of eligible voters, and
 - (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

41. NOT USED

42. Arrangements for counting of the votes

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

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

43. The count

43.1 The returning officer is to:

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

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

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

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

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

shall, subject to rules 44.2 and 44.3, be rejected and not counted.

44.2 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.

44.3 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.

44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

44.5 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.

44.6 Any text voting record:

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

shall, subject to rules 44.7 and 44.8, be rejected and not counted.

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

44.8 A text voting record on which a vote is marked:

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

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

44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules 44.7 and 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

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

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

45. NOT USED

46. NOT USED

47. NOT USED

48. NOT USED

49. NOT USED

50. NOT USED

51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

- 52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Applicant NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

52.2 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 44.5,
 - (c) the number of rejected text voting records under each of the headings in rule 44.10,
- available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

54.3 The returning officer must endorse on each packet a description of:

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

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

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

57. Retention and public inspection of documents

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1 The corporation may not allow:
- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
 - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.
- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
- (a) persons,
 - (b) time,
 - (c) place and mode of inspection,

(d) production or opening,

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

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

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

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

59.2 Where a new election is ordered under rule 59.1, 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.

59.3 Where a poll is abandoned under rule 59.1(a), rules 59.4 to 59.7 are to apply.

59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

59.5 The returning officer is to:

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

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

59.6 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.

59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 59.4 to 59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

65. Meaning of "for the purposes of an election"

65.1 In this Part, the phrase "for the purposes of an election" means with a view to, or otherwise in connection with, promoting or procuring a candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS Improvement for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

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

66.3 An application may only be made to NHS Improvement by:

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

66.4 The application must:

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

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

- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHS Improvement will refer the application to the independent election arbitration panel appointed by NHS Improvement.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHS Improvement shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

- (a) a member of the corporation,

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

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

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

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

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

ANNEX 6 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Appendix 1

Eligibility to be on the Council of Governors

- 1 A person may not become or continue as a Governor of the Trust if:
 - 1.1 in the case of an Elected Governor, he ceases to be a member of the constituency he represents;
 - 1.2 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of him;
 - 1.3 he has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 1.4 he is a person whose tenure of office as the chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interest of the health service;
 - 1.5 he is a, chairman, chief executive officer of another NHS Foundation Trust;
 - 1.6 he has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list;
 - 1.7 he has refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
 - 1.8 he is the subject of a Sex Offenders Order and /or his name is included in the Sex Offenders Register;
 - 1.9 he has failed to repay (without good cause) any amount of monies properly owed to the Trust;
 - 1.10 he has failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct;
 - 1.11 he has in the five years preceding his proposed election or appointment been confirmed as an 'intractable complainant' in accordance with the relevant Trust policy for handling complaints;
 - 1.12 in the case of a People Who Use the Trust's Services Governor who wishes to stand for re-election at the end of his current term of office in accordance with paragraph 13.1.3 of the Constitution, he has not used the Trust's services or attended the Trust as the carer of a person who uses the Trust's services within a period of five years immediately preceding the end of his current term of office.
 - 1.13 Where a person has been elected or appointed to be a Governor and he becomes disqualified or is removed from office under paragraph 14 of the Constitution or paragraph 1 of this Annex 6, he shall notify the Secretary in writing of such disqualification and/or (as the case may be) removal. If it comes to the notice of the Secretary at the time of his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare

that the person in question is disqualified and notify him in writing to that effect. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor. In the event that a Governor shall dispute that he is disqualified the Governor may refer the matter to the Dispute Resolution Procedure within 28 days of the date upon which notice in writing is given to the Governor.

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Appendix 2

Council of Governors: Objectives

- 1 The Trust shall seek to ensure, subject to the requirements of the 2006 Act, that the composition of the Council of Governors meets the following objectives:
 - 1.1 the interests of the community served by the Trust are appropriately represented and NHS and Trust core principles (as set out in Appendix 1 of Annex 9) are upheld; and
 - 1.2 the level of representation of the Public Constituency, the Staff Constituency, the People Who Use the Trust's Services Constituency and the Other Partnership Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and, to this end, the Council of Governors:
 - 1.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Trust's membership strategy, and
 - 1.4 shall from time to time, and not less than every three years, review the policy for the composition of the Council of Governors;
 - 1.5 when appropriate, shall propose amendments to this Constitution;
 - 1.6 shall provide to the Members relevant information concerning the performance and forward plans of the Trust;
 - 1.7 shall act in an advisory capacity when the Board of Directors has to make challenging or difficult decisions including those that affect the strategic direction of the Trust; and
 - 1.8 when appropriate, shall be entitled to appoint an independent advisor and a nominated non-executive Director to assist the Council of Governors in their advisory role.

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Appendix 3

Roles and Responsibilities of Governors

- 1 The roles and responsibilities of the Governors are:
 - 1.1 at a general meeting:
 - 1.1.1 Subject to paragraphs 25 and 26 of this Constitution, to appoint or remove the Chairman and the other non-executive Directors. The removal of a non-executive Director requires the approval of three-quarters of the members of the Council of Governors;
 - 1.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
 - 1.1.3 to appoint or remove the Auditor;
 - 1.1.4 to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report;
 - 1.1.5 to consider disputes as to membership referred to it pursuant to paragraph 1.4 of Appendix 2 of Annex 9; and/or
 - 1.1.6 to consider resolutions to remove a Governor pursuant to paragraph 14 of this Constitution.
 - 1.1.7 at a general meeting or otherwise:
 - 1.1.8 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors;
 - 1.1.9 to represent the interest of the Members of the Trust as a whole and the interest of the public;
 - 1.1.10 to approve (by a majority of the Council of Governors present and voting at a meeting of the Council of Governors) an appointment (by the non-executive Directors) of the Chief Executive (and Accounting Officer) other than the initial Chief Executive appointed in accordance with paragraph 19(5) of Schedule 7 to the 2006 Act;
 - 1.1.11 to give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the Forward Plan in respect of each Financial Year to be given to NHS Improvement;
 - 1.1.12 to consider the Annual Accounts, any report of the Auditor on them and the Annual Report; and/or
 - 1.1.13 to respond as appropriate when consulted by the Board of Directors.
 - 1.2 The Governors also have the specific role and function of:
 - 1.2.1 providing views to the Board of Directors on the strategic direction of the Trust;

- 1.2.2 developing membership;
 - 1.2.3 representing the interests of the Members;
 - 1.2.4 holding the Board of Directors to account in relation to the Trust's performance;
and
 - 1.2.5 Notwithstanding the provisions of paragraphs 1.1.1 to 1.1.6 of Appendix 3 of Annex 6, the Governors may exercise other functions at the request of the Board of Directors.
- 1.3 To make determinations in accordance with paragraph 42.6 in respect of Forward Plans.
 - 1.4 To consider (and approve if appropriate) proposed increases by 5% or more of the proportion of the Trust's total income in any Financial Year attributable to activities other than the provision of goods and services for the purpose of the health service in England.

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Appendix 4

Council of Governors: Further Provisions

1 Remuneration

- 1.1 Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer.

2 Vacancies

- 2.1 In the event of an Elected Governor's seat falling vacant for any reason before the end of the term of office it shall be filled by the second place candidate in the last held election for that seat provided that the second place candidate achieved at least five percent of the vote in the last held election for that seat. If that individual declines it shall be filled by the third place candidate provided that the third place candidate achieved at least five percent of the vote in the last held election for that seat (the "Reserve Governor"). If the vacancy is filled in this way the Reserve Governor shall be eligible to serve three full year terms (subject to re-election) in addition to the partial term served.
- 2.2 In the event that a Reserve Governor is not available under paragraph 2.1 above, a by-election shall be held in accordance with the Model Rules for Election unless an election is due within 6 months in which case the seat shall stand vacant until the following scheduled election.
- 2.3 In the event of an Appointed Governor's seat falling vacant for any reason before the end of the term of office, the Trust will request that the relevant Other Partnership Organisation appoint a "Replacement Governor" within 30 days. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 4.2 of Annex 4.
- 2.4 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

3 Meetings

- 3.1 The Council of Governors is to meet at least four times per year, including an annual general meeting no later than 30 September in each year apart from the first year, when the Council of Governors is to receive and consider the Annual Accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the Annual Report.
- 3.2 The Secretary shall call meetings in accordance with paragraph 3.1 of Appendix 4 of Annex 6 above.
- 3.3 Any meeting of the Council of Governors requires a quorum of at least 12 Governors from the whole membership, providing that Governors from the Public Constituencies are in the majority.

4 Committees and Sub-Committees

- 4.1 The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

- 4.2 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 4.3 These committees or sub-committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with the Dispute Resolution Procedure.

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

(The Standing orders for the Council of Governors and Board of Directors are available from the Secretary on request)

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

(The Standing orders for the Council of Governors and Board of Directors are available from the Secretary on request)

ANNEX 9 - FURTHER PROVISIONS

Appendix 1

NHS and Trust Core Principles

1 NHS Core Principles

- 1.1 The NHS will provide a universal service for all based on clinical need, not ability to pay.
- 1.2 The NHS will provide a comprehensive range of services.
- 1.3 The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.
- 1.4 The NHS will respond to different needs of different populations.
- 1.5 The NHS will work continuously to improve the quality of services and to minimise errors.
- 1.6 The NHS will support and value its staff.
- 1.7 The NHS will work together with others to ensure a seamless service for patients.
- 1.8 The NHS will help keep people healthy and work to reduce health inequalities.
- 1.9 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

2 Trust Vision and Values (Core Principles)

- 2.1 The Trust aims to:
 - 2.1.1 Treat people well;
 - 2.1.2 Involve not ignore;
 - 2.1.3 Create respectful places; and
 - 2.1.4 Be open, inclusive and accountable.

3 Representative Membership

- 3.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those eligible for membership. To this end:
- 3.2 The Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least every three years.
- 3.3 The Council of Governors shall present to each Annual Members' Meeting:
 - 3.3.1 a report on steps taken to secure that, taken as a whole, the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership;
 - 3.3.2 the progress of the membership strategy;

3.3.3 any changes to the membership strategy.

4 Co-operation with health service and other bodies

- 4.1 In exercising its functions the Trust shall co-operate with Health Service Bodies and any local authority with which the Trust has a Local Authority Partnership Agreement.
- 4.2 Notwithstanding the provisions of paragraph 4.1 above, the Trust shall co-operate with any specific third party body that it has a duty (statutory, contractual, or otherwise) to co-operate with.

5 Respects for rights of people

- 5.1 In conducting its affairs, the Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Trust as set out in the Human Rights Act 1998.

ANNEX 9 - FURTHER PROVISIONS

Appendix 2

Membership

1 Disqualification from membership of the Trust

- 1.1 A person may not be a Member of the Trust if they are under 14 years of age.
- 1.2 A person may not become or remain a Member of the Trust if he has demonstrated aggressive or violent behaviour at any Hospital or Trust premises towards any member of staff, agent or sub-contractor of the Trust or any person visiting the Hospital or Trust premises as a person who uses the Trust's services, a carer or a visitor, and following such behaviour he has been asked to leave, has been removed or excluded from any Hospital in accordance with the relevant Trust policy for withholding treatment from violent/aggressive people who use the Trust's services.
- 1.3 A person may not become or remain a Member of the Trust if they have been confirmed as an 'intractable complainant' in accordance with the relevant Trust policy for handling complaints.
- 1.4 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member the Secretary shall give the Member 14 days written notice to show cause why his name should not be removed from the register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the register of Members. In the event of any dispute the Secretary shall refer the matter to the Dispute Resolution Procedure.
- 1.5 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

2 Expulsion from membership of the Trust

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:
- 2.2 Any Member may complain to the Secretary that another Member has acted in a way detrimental to or contrary to the interests of the Trust, or is otherwise disqualified as set out in paragraph 1 above.
- 2.3 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:
 - 2.3.1 dismiss the complaint and take no further action; or
 - 2.3.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.

3 Termination of Membership

- 3.1 A Member shall cease to be a Member on:

- 3.1.1 death;
- 3.1.2 resignation by notice in writing to the Secretary;
- 3.1.3 ceasing to fulfil the requirements of paragraphs 7, 8 or 9 of this Constitution, as the case may be;
- 3.1.4 being disqualified pursuant to paragraph 1 above, or being expelled pursuant to paragraph 2 above.

ANNEX 9 - FURTHER PROVISIONS

Appendix 3

Further Provisions – General

1 Indemnity

- 1.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 1.2 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

2 Dispute Resolution Procedures

- 2.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 2.2 In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.
- 2.3 Subject to paragraph 19 of the Constitution, in the event of dispute between the Council of Governors and the Board of Directors:
 - 2.3.1 in the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
 - 2.3.2 if the Chairman is unable to resolve the dispute he or she shall refer the dispute to the Trust Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
 - 2.3.3 if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.

ANNEX 9 - FURTHER PROVISIONS

Appendix 4

The Role and Responsibilities of the Secretary

- 1 Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected to:
 - 1.1 Ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors;
 - 1.2 Ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for Directors) are complied with;
 - 1.3 Ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for Governors) are complied with;
 - 1.4 Advise the Board of Directors and the Council of Governors (through the Chairman or the Deputy Chairman, as the case may be) on all governance matters; and
 - 1.5 Be available to give advice and support to individual Directors and assistance with professional development.

ANNEX 10 – SIGNIFICANT TRANSACTION

- 1 Save for the transactions set out at paragraph 3 of this Annex 10 a Significant Transaction is a transaction which meets any of the following criteria:

Ratio	Description	Percentage
Assets	The Gross Assets subject to the transaction divided by the gross assets of the Trust.	>25
Income	The income attributable to: the assets; or the contract associated with the transaction divided by the income of the Trust.	>25
Consideration to total Trust Capital	The Gross Capital of the company or business being acquired/divested divided by the Total Capital of the Trust following completion, or the effects on the Total Capital of the Trust resulting from a transaction.	>25

- 2 For the purposes of this Annex 10:

Gross Assets is the total of fixed assets and current assets;

Gross Capital equals the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets; and

Total Capital of the Trust equals taxpayers' equity.

- 3 Notwithstanding the above provisions and for the avoidance of doubt, a Significant Transaction does not include:
- 3.1 Any contracts in place from time to time with NHS North East Hampshire and Farnham Clinical Commissioning Group on behalf of NHS Surrey Downs Clinical Commissioning Group, NHS East Surrey Clinical Commissioning Group, NHS North West Surrey Clinical Commissioning Group, NHS Guildford and Waverley Clinical Commissioning Group, and Surrey Health Clinical Commissioning Groups (or their respective successor organisations), and other Clinical Commissioning Groups and/or NHS Commissioning Board; or
 - 3.2 Any contracts in place from time to time with Surrey County Council and/or Hampshire County Council (or their respective successor organisations).