

**HERTFORDSHIRE PARTNERSHIP UNIVERSITY NHS FOUNDATION  
TRUST**

**CONSTITUTION**

**September 2021**

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## 1 NAME

- 1.1 The name of the foundation trust is "Hertfordshire Partnership University NHS Foundation Trust" (the "Trust").
- 1.2 In this Constitution, defined terms have the specific meanings given to them in paragraph 2 below.

## 2 INTERPRETATION AND DEFINITIONS

- 2.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act as amended by the 2012 Act.
- 2.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 2.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 2.4 Headings are for ease of reference only and are not to affect interpretation.
- 2.5 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated or the context otherwise so requires.
- 2.6 In this Constitution:

**the 2006 Act** is the National Health Service Act 2006 (as amended).

**the 2012 Act** is 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, and at the date of this Constitution is the Chief Executive.

**Annual Accounts** means those accounts prepared by the Trust pursuant to paragraph 40 of Schedule 7 to the 2006 Act.

**Annual Members' Meeting** has the meaning ascribed to it in paragraph 10 of this Constitution.

**Annual Report** means a report prepared by the Trust pursuant to paragraph 41 of Schedule 7 to the 2006 Act.

**Appointed Governors** means Governors who are appointed by the local authority or University of Hertfordshire or the partner organisations specified in Annex 3 of this Constitution.

**Auditor** means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 41 of this Constitution.

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

**Chair** means the chairman of the Board of Directors and the Council of Governors. The expression "the Chair" shall be deemed to include the Vice-Chair or any other Non-Executive Director appointed if the Chair and/or Vice-Chair is absent from the meeting, otherwise unavailable;

**Chief Executive** means the Chief Executive of the Trust.

**Clear Day** means a day of the week not including Saturday, Sunday or a public holiday.

**Conflict** has the meaning ascribed to it in paragraph 34.1.1 of the Constitution.

**Constitution** means this Constitution together and all annexes to it.

**Council of Governors** means the Council of Governors as constituted in this Constitution.

**Director** means a member of the Board of Directors, and includes both Executive Directors and Non-Executive Directors.

**Director of Finance** means the Chief Financial Officer of the Trust.

**Directors' Code of Conduct** means the Code of Conduct for Directors of the Trust, as adopted by the Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to.

**Disclosure Barring Service** means the Executive Agency of the Home Office to which the Secretary of State has delegated his functions under Part V of the Police Act 1977 in relation to applications for criminal records certificates and enhanced criminal record certificates as established by section 87(1) of the Protection of Freedoms Act 2012.

**Executive Director** means a member of the Board of Directors of the Trust who is also an Officer of the Trust.

**Elected Governors** means Governors who are elected by the Public Constituencies or the Staff Constituency.

**Financial Year** means a 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.

**Governors' Code of Conduct** means the Code of Conduct for Governors of the Trust, as adopted by the Trust and as amended from time to time by the Council of Governors which all Governors must subscribe to.

**Health Overview and Scrutiny Committee** means a local authority overview and scrutiny committee established pursuant to section 21 of the Local Government Act 2000.

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

**Interested Director** has the meaning ascribed to it in paragraph 34.11 of the Constitution.

**Licence** means the licence issued to the Trust under section 88 of the 2012 Act.

**Member** means a member of the Trust and the term "membership" shall be construed accordingly.

**Model Rules for Elections** means the election rules set out in Annex 4 of this Constitution.

**Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act, which operates as part of NHS Improvement.

**Motion** means a formal proposition to be discussed and voted on during the course of a meeting of the Council of Governors or the Board of Directors (as relevant).

**NHS Foundation Trust Code of Governance** means the best practice advice published by Monitor on 19 December 2013 and updated in July 2014, as may be amended, varied or replaced by Monitor from time to time.

**NHS Improvement** is the operational name for the organisation that brings together Monitor, NHS Trust Development Authority, Patient Safety, Advancing Change Team and the Intensive Support Teams.

**Nominated Officer** means an Officer charged with the responsibility for discharging specific tasks within the Standing Orders or Standing Financial Instructions.

**Non-Executive Director** means a member of the Board of Directors who is not an Officer of the Trust.

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

**Panel** has the meaning ascribed to it in paragraph 19.1 of this Constitution.

**Principal Purpose** means the purpose set out in Section 43(1) of the 2006 Act.

**Public Constituency** has the meaning ascribed to it in paragraph 7.2 of this Constitution.

**Regulatory Framework** means the 2006 Act, this Constitution and the Licence and any guidance relating to NHS Foundation trusts issued by NHS Improvement .

**Scheme of Delegation** means the reservation of powers to the Board of Directors and the scheme of delegation by the Board of Directors of such powers, as set out in the Trust's document titled 'Reservation of Powers to the Board and Delegation of Powers'.

**Secretary** means the person appointed pursuant to paragraph 36.

**Significant Transaction** means a transaction defined as a significant transaction in NHS Improvement's Transactions guidance – for trusts undertaking transactions, including mergers and acquisitions as may be updated from time to time.

**Staff Constituency** has the meaning ascribed to it in paragraph 8.3 of this Constitution.

**Standing Financial Instructions or SFI(s)** means the Trust's standing financial instructions which regulate the conduct of Directors and Nominated Officers in relation to all financial matters with which they are concerned.

**Standing Orders or SO(s)** means the Standing Orders for the Council of Governors and/or the Standing Orders for the Board of Directors (as relevant).

**Trust** means the Hertfordshire Partnership University NHS Foundation Trust.

**Trust Headquarters** means the Trust Head Office at the Colonnades, Beaconsfield Road, Hatfield, AL10 8YE.

**Vice-Chair** means the Non-Executive Director appointed by the Board of Directors to take on the Chair's duties if the Chair is absent for any reason or is otherwise unable to participate in the consideration or approval of any matter pursuant to this Constitution.

**University** means the University of Hertfordshire;

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

### **3 PRINCIPAL PURPOSE**

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

### **4 POWERS**

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

- 4.3 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 4.4 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.4 The powers conferred on the Trust by the Mental Health Act 1983, Section 23(6) (as amended) may only be exercised by a sub-committee of three or more persons, authorised by the Board of Directors, each of whom is neither an Executive Director nor an employee of the Trust.

## **5 MEMBERSHIP AND CONSTITUENCIES**

- 5.1 The Trust shall have Members, each of whom shall be a member of one of the following constituencies:
- 5.1.1 a Public Constituency; or
- 5.1.2 a Staff Constituency.

## **6 APPLICATION FOR MEMBERSHIP**

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust and in accordance with the provisions of paragraphs 7 and 8 below.

## **7 PUBLIC CONSTITUENCY**

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified for a Public Constituency are referred to collectively as a "Public Constituency".
- 7.3 The minimum number of Members in each Public Constituency is specified in Annex 1.
- 7.4 An eligible individual may apply to the Trust for membership. On receipt of an application for membership and subject to being satisfied that the applicant is eligible for membership, the Secretary shall enter the applicant's name 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 provided:
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months and will include:



- 8.2.1 Academic staff employed by the University and working in the Trust for 12 months or more.
  - 8.2.2 Volunteers who have worked within the Trust for 12 consecutive months or more-
  - 8.2.3 Staff employed by independent contractors who exercise functions for the purposes of the Trust and who have worked [within the Trust/on Trust premises] for 12 months or more (including Shared Business Services, catering and Estates Staff).
- 8.3 Those individuals who are eligible for membership of the Trust by reason of paragraphs 8.1 or 8.2 above are referred to collectively as the "Staff Constituency".
- 8.4 The Staff Constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of Members in the Staff Constituency is specified in Annex 2.
- 8.6 An individual who is:
- 8.6.1 eligible to become a member of the Staff Constituency; and
  - 8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,
- shall become a Member as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made. Such individual shall become a Member upon his name being entered in the Trust's register of Members unless he informs the Trust that he does not wish to do so.
- 8.7 An individual eligible under this paragraph 8 may apply to the Trust for membership. On receipt of an application for membership and subject to being satisfied that the applicant is eligible for membership, the Secretary shall enter the applicant's name in the Trust's register of Members

## **9 MEMBERSHIP – RESTRICTIONS, DISQUALIFICATIONS AND REMOVAL**

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency. An individual shall not become or continue as a Member if:
  - 9.2.1 the individual is less than 14 years of age at the time of the application to become a member;
  - 9.2.2 the individual is less than 16 years of age and does not have the agreement of a parent or guardian;

- 9.2.3 he is or wishes to become a member of a Public Constituency and he does not or no longer resides within the relevant catchment area as set out in Annex 1;
- 9.2.4 in the last five years prior to the individual's application for membership, the individual has been involved, as a perpetrator, in a serious incident of assault or violence, or in one or more incidents of harassment against any persons working for the Trust or any other NHS Body or any service users or carers or visitors to the Trust or any other NHS Body;
- 9.2.5 in the last 5 years the individual has been excluded from any of the Trust's premises from which services are provided;
- 9.2.6 the individual is a vexatious complainant as determined by the Secretary; or
- 9.2.7 the Council of Governors resolves that there are reasonable grounds to believe that the individual is likely to:
- (a) prejudice the ability of the Trust to fulfil its Principal Purpose or other of its purposes under the Constitution or otherwise to discharge its duties and functions; or
  - (b) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
  - (c) adversely affect public confidence in the goods or services provided by the Trust; or
  - (d) otherwise bring the Trust into disrepute
- 9.2.8 the individual is a former employee of the Trust and his contract has been terminated due to poor performance or misconduct.
- 9.3 The process for dealing with a resolution of the Council of Governors under paragraph 9.2.7 is set out in the Standing Orders of the Council of Governors. No person who has been expelled from membership of the Trust is to be re-admitted as a Member except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors.
- 9.4 A Member shall otherwise cease to be a Member of the Trust in the following circumstances:
- 9.4.1 they resign by notice to the Trust;
  - 9.4.2 they die; or
  - 9.4.3 if the Trust reasonably believes that the Member no longer lives at their registered address and the Trust does not know where that Member lives.

## **10 ANNUAL MEMBERS' MEETINGS**

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

- 10.2 Further provisions about the Annual Members' Meeting are set out in Annex 8 – Annual Members' Meeting.

## **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 3.
- 11.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.
- 11.4 The Appointed Governors shall be appointed by the relevant Appointing Organisation. The number of Appointed Governors appointed by each Appointing Organisation is specified in Annex 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 using the single transferable vote as may be varied from time to time.
- 12.2 The Model Rules for Elections, as published from time to time by the Department of Health, form part of this Constitution. The Model Election Rules current at the date of this Constitution are attached at Annex 4.
- 12.3 A subsequent 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 purposes of paragraph 47 of this Constitution.
- 12.4 An election, if contested, shall be by secret ballot.
- 12.5 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 Election Rules he has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held.

## **13 COUNCIL OF GOVERNORS - TENURE**

- 13.1 Elected Governors:
- 13.1.1 may hold office for a period of up to 3 years. The period for which they are elected shall be known as the term;
- 13.1.2 subject to paragraph 13.1.3, shall be eligible for re-election or re-appointment as appropriate at the end of his term;
- 13.1.3 may hold office for a maximum of nine (9) consecutive years. A Governor may, after no less than a period of 12 months following the end of the nine

(9) consecutive years, be eligible to put their name forward for election for a further term of office-;

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

13.2 Appointed Governors:

13.2.1 may hold office for a period of up to 3 years;

13.2.2 subject to paragraph 13.2.3, shall be eligible for re-appointment at the end of their term;

13.2.3 may hold office for a maximum of three (3) consecutive terms;

13.2.4 shall cease to hold office if the Appointing Organisation of that Governor withdraws its appointment of him by notice in writing to the Secretary or if he ceases to be employed by or associated with the Appointing Organisation.

#### **14 COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL**

14.1 A Governor may resign from that office at any time during the Term of that office by giving notice in writing to the Secretary or the Chair, such notice is to specify the date of the resignation.

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

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

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

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

14.2.4 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);

14.2.5 a person who is an Executive Director, or Non-Executive Director of the Trust;

14.2.6 a person who is a director or governor of another Foundation Trust;

14.2.7 a person who has been removed as a governor of the Trust or another Foundation Trust ;

14.2.8 a spouse, partner, parent or child of a member of the Board of Directors;

14.2.9 a member of a local authority's Health Overview and Scrutiny Committee;

- 14.2.10 being a member of the Public Constituency, a person who refused to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a Member of the Trust and that they are not prevented from being a member of the Council of Governors;
  - 14.2.11 a person who is required to notify the police of his name and address as a result of being convicted or cautioned for relevant sex offences pursuant to the Sex Offenders' Act 1997 or other relevant legislation;
  - 14.2.12 a person who has been disqualified from being a member of a local authority under the provisions of the Local Authority Act 2000 or any other applicable legislation within the areas of the Public Constituencies;
  - 14.2.13 a person who, on the basis of disclosures obtained through an application to the Disclosure and Barring Service, is considered unsuitable by the Trust's Executive Director responsible for human resources;
  - 14.2.14 a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, expiry of a fixed term contract, disability, ill health or age from any paid employment with a Health Service Body. In other cases of dismissal, such as capability, an individual may be permitted to become a Governor, at the discretion of the Trust, and subject to full disclosure of the relevant facts concerning their dismissal from any paid employment with a Health Service Body;
  - 14.2.15 a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service, or for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 14.2.16 he has refused without reasonable cause to undertake any training which the Chair requires all Governors to undertake; or
  - 14.2.17 he has failed to sign and give to the Secretary a statement in the form required by the Secretary confirming acceptance of the Governors' Code of Conduct.
- 14.3 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.4 If a Governor fails to attend two (2) consecutive meetings of the Council of Governors in any financial year, his tenure of office is to be terminated immediately unless the other Governors are satisfied that:
- 14.4.1 the absence was due to a reasonable cause; and
  - 14.4.2 he/she will be able to start attending meetings of the Council of Governors again within such period as they consider reasonable.
- 14.5 If a Governor is considered 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; or
  - 14.5.2 the terms of the Trust's Licence; or

- 14.5.3 the Standing Orders of the Council of 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 he can demonstrate that he has gained no personal benefit, he has failed to declare an interest as required by this Constitution or the Standing Orders of the Council of Governors, or he has spoken or voted at a meeting on a matter in which he has an interest contrary to this Constitution or the Standing Orders of the Council of Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and he is adjudged to have so acted by a majority of not less than 75% of the Council of Governors then the Governor shall vacate his office immediately.
- 14.6 The Standing Orders of the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a governor's tenure.

## **15 COUNCIL OF GOVERNORS – VACANCY**

- 15.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of the term of office, the following provisions will apply:
- 15.1.1 Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
  - 15.1.2 When a vacancy arises for one or more Elected Governors, the Council of Governors shall have the option to take from the list of Members who stood for election at the most recent election of Governors from the class or constituency in question the next highest polling candidate. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Election as they apply to the Trust and shall be available to the Governors on two occasions within twelve months of the previous election. Governors appointed in this way shall hold office for a minimum of six months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of Governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of the Governor whose cessation of office gave rise to the vacancy.

## **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 as a whole and the interests of the public.
- 16.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

## **17 COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

- 17.1 The Chair or in their absence the Lead Governor is to preside at the meeting of the Council of Governors. If the Chair, Deputy Chair and the Lead Governor are absent, such Non-Executive Directors that are present and the Council of Governors shall choose who shall preside. Where the Chair, Lead Governor, and other Non-Executive Directors are all absent or have a conflict of interest, a member of the Council of Governors (to be appointed from amongst the Council of Governors) shall preside at the meeting and shall have a casting vote.
- 17.2 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. The Chair may exclude any person from a meeting of the Council of Governors if that person is interfering with or preventing the proper conduct of the meeting.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.

## **18 COUNCIL OF GOVERNORS – STANDING ORDERS**

- 18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex-5.

## **19 COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL**

- 19.1 In this paragraph, “the Panel” means a panel of persons appointed by Monitor to which a Governor of the Trust may refer a question as to whether the Trust has failed or is failing -
- 19.1.1 To act in accordance with its Constitution; or
  - 19.1.2 to act in accordance with provisions 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 - CONFLICTS OF INTEREST OF GOVERNORS**

- 20.1 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 he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of Governors declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

## **21 COUNCIL OF GOVERNORS – TRAVEL EXPENSES**

- 21.1 The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Board of Directors.

## **22 ROLES AND RESPONSIBILITIES OF THE COUNCIL OF GOVERNORS**

- 22.1 In addition to the general duties of the Council of Governors as set out at paragraph 16 of the Constitution, the general responsibilities of the Council of Governors shall be:
- 22.1.1 to support the Board of Directors in setting the longer-term vision for the Trust, to influence proposals to make changes to services and to act in a way that is consistent with NHS principles and values and the terms of the Trust's Licence;
  - 22.1.2 to engage in dialogue with and provide advice to the Board of Directors with regard to the Trust's future vision and strategy and to act as a source of ideas about how the Trust can provide its services in ways that meet the needs of the community it serves;
  - 22.1.3 to review annually the extent to which the Trust is meeting its objective of delivering high quality services;
  - 22.1.4 to work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them;
  - 22.1.5 to exercise other functions at the request of the Board of Directors;
  - 22.1.6 to be consulted by the Board of Directors regarding the information to be given to Monitor as to the Trust's forward planning in respect of each Financial Year and to give their views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to Monitor;
  - 22.1.7 to respond as appropriate when consulted by the Board of Directors;
  - 22.1.8 to exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under the Constitution;
  - 22.1.9 to respond as appropriate when consulted by the Board of Directors in accordance with the Constitution;
  - 22.1.10 to prepare, and from time to time ,review the Trust's membership strategy; and
  - 22.1.11 when appropriate, to make recommendations for the revision of the Constitution.
- 22.2 The Council of Governors shall at all times seek to comply with the Trust's Code of Governance and the Code of Conduct for the Council of Governors.



## **23 BOARD OF DIRECTORS – COMPOSITION**

- 23.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 23.2 The Trust Board of Directors is to comprise of a sufficient number of Executive Directors and Non-Executive Directors in order to conduct its business.
- 23.3 One of the Executive Directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the Executive Directors shall be the Finance Director.
- 23.6 One of the Executive Directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One of the Executive Directors is to be a registered nurse or a registered midwife (within the meaning of the Nursery and Midwifery Order 2001 (SI 2002/253)).
- 23.8 To be eligible to be Finance Director of the Trust, the individual must have an appropriate accountancy qualification and the expertise or experience to lead the financial management of the Trust.
- 23.9 In the event that there are an equal number of Executive Directors and Non-Executive Directors (including the Chairman) then the Chairman will have an additional vote.
- 23.10 The number of Executive Directors shall never exceed the number of Non-Executive Directors.

## **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 – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR**

- 25.1 A person may be appointed as a Non-Executive Director only if:
  - 25.1.1 he is a member of the Public Constituency; and
  - 25.1.2 he is not disqualified by virtue of paragraph 31 below.

## **26 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS**

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors.
- 26.2 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors. Appointment of the Chair

or another Non-Executive Director shall require the approval of a majority of the Council of Governors present and voting at a meeting of the Council of Governors.

- 26.3 The initial Chair and the initial Non-Executive Directors are to be appointed in accordance with paragraph 27 below.

**27 BOARD OF DIRECTORS – APPOINTMENT OF INITIAL CHAIR AND INITIAL OTHER NON-EXECUTIVE DIRECTORS**

- 27.1 The Council of Governors shall appoint the chairman of the applicant NHS trust as the initial Chair of the Trust, if he wishes to be appointed.
- 27.2 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.
- 27.3 The criteria for qualification for appointment as a Non-Executive Directors set out in paragraph 25 above (other than disqualification by virtue of paragraph 31 below) do not apply to the appointment of the initial Chair and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph 27.
- 27.4 An individual appointed as the initial Chair or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as chairman or (as the case may be) non-executive director of the applicant NHS trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

**28 BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR AND SENIOR INDEPENDENT DIRECTOR**

- 28.1 The Council of Governors at a general meeting of the Council of Governors may appoint one of the Non-Executive Directors as a Vice-Chair.
- 28.2 The Chair, in consultation with the Non-Executive Directors and the Council of Governors, may appoint a Non-Executive Director to be the Senior Independent Director, in accordance with paragraph 2.11 if the Board of Directors Standing Orders

**29 BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

- 29.1 A committee comprising the Chair and the other Non-Executive Directors shall appoint or remove the Chief Executive.
- 29.2 The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present and voting at a meeting of the Council of Governors.
- 29.3 The initial Chief Executive is to be appointed in accordance with paragraph 30 below.
- 29.4 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

### **30 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF INITIAL CHIEF EXECUTIVE**

- 30.1 The Non-Executive Directors shall appoint the chief officer of the applicant NHS trust as the initial Chief Executive of the Trust if he wishes to be appointed.
- 30.2 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.

### **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 who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - 31.1.3 a person who within the preceding five (5) years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
  - 31.1.4 a person whose tenure in office as a chair 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, non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 31.1.5 a person who has had his name removed from a list of maintained under regulations pursuant to Sections 91, 106, 123, 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;
  - 31.1.6 a person who has within the preceding 2 years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a NHS body;
  - 31.1.7 a person who is executive or Non-Executive Director, Chair, Chief Executive of another NHS Trust/Foundation Trust
  - 31.1.8 a person who is a director of (or equivalent) of:
    - (a) any local Healthwatch organisation that holds a contract with a local authority for an area that includes the whole of part of any area specified in Annex 1 as an area for a Public Constituency, or
    - (b) any contractor that is authorised to assist in any such Local Healthwatch organisation or to carry out activities on its behalf under arrangements made by it pursuant to Section 222(2B) of the Local Government and Public Involvement in Health Act 2007.
  - 31.1.9 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

- 31.1.10 in the case of a Non-Executive Director, a person who has refused without reasonable cause to fulfil any training requirement established by the Chair;
- 31.1.11 a person who has refused 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; or
- 31.1.12 a person in relation to whom a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986);
- 31.1.13 a member of the Council of Governors;
- 31.1.14 a spouse, partner, parent or child of a member of the Board of Directors;
- 31.1.15 a member of a local authority's Health Overview and Scrutiny Committee;
- 31.1.16 a person who is the subject of a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003)
- 31.1.17 a person who is not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or under Condition G4 of the Trust's Licence.
- 31.1.18 in the case of a Non-Executive Director, a person who is no longer a member of the Public Constituency.

## **32 BOARD OF DIRECTORS – MEETINGS**

- 32.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 32.2 Before holding a meeting, the Board of Directors must send a copy of the agenda for 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.

## **33 BOARD OF DIRECTORS – STANDING ORDERS**

- 33.1 The Standing Orders for the practice and procedure of the Board of Directors are attached at Annex 6.

## **34 BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS**

- 34.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
  - 34.1.1 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**").
  - 34.1.2 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.

- 34.2 The duty referred to in sub-paragraph 34.1.1 above is not infringed if:
- 34.2.1 the situation cannot reasonably be regarded as likely to give rise to a Conflict; or
  - 34.2.2 the matter has been authorised in accordance with the Constitution.
- 34.3 The duty referred to in sub-paragraph 34.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a Conflict.
- 34.4 In sub-paragraph 34.1.2 above and 34.13.5 below, “third party” means a person other than:
- 34.4.1 the Trust; or
  - 34.4.2 a person acting on its behalf.
- 34.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 34.6 If a declaration under this paragraph 34 proves to be, or becomes, inaccurate or incomplete a further declaration must be made.
- 34.7 Any declaration required by this paragraph 34 must be made before the Trust enters into the transaction or arrangement.
- 34.8 This paragraph 34 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.
- 34.9 A Director need not declare an interest:
- 34.9.1 If the interest cannot reasonably be regarded as likely to give rise to a Conflict;
  - 34.9.2 If, or to the extent that, the Directors are already aware of the interest; or
  - 34.9.3 If, or to the extent that, the interest 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 that purpose under the Constitution.
- 34.10 A matter shall have been authorised for the purposes of paragraph 34.2.2 above if:
- 34.11 The Directors, in accordance with the requirements set out in paragraph 34.13, 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 34.1.1 above to avoid Conflicts.
- 34.12 Any authorisation under this paragraph 34.11 will be effective only if:

- 34.12.1 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 or in such other manner as the Directors may determine;
  - 34.12.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and
  - 34.12.3 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.
- 34.13 Any authorisation of a Conflict under paragraph 34.11 may (whether at the time of giving the authorisation or subsequently):
- 34.13.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
  - 34.13.2 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;
  - 34.13.3 provide that the Interested Director shall or shall not be an eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;
  - 34.13.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
  - 34.13.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, he 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
  - 34.13.6 permit the Interested Director to absent himself 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.
- 34.14 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.
- 34.15 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.
- 34.16 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he derives 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.

- 34.17 Subject to paragraph 34.18 below, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 34.18 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors (other than the Chair) at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### **35 BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

- 35.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors. Any reappointment of a Non-Executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with the procedures which the Board of Directors has approved.
- 35.2 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.
- 35.3 The Trust may pay travelling and other expenses to Non-Executive Directors at such rates as the Appointments and Remuneration Committee of the Council of Governors decides. These are to be disclosed in bands in the Annual Report.

### **36 SECRETARY**

- 36.1 The Board shall appoint a Secretary to carry out the roles assigned to the secretary under this Constitution and such other responsibilities as the Board of Directors may determine.

### **37 REGISTERS**

- 37.1 The Trust shall have:
- 37.1.1 a register of Members showing, in respect of each Member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
  - 37.1.2 a register of members of the Council of Governors;
  - 37.1.3 a register of interests of the Governors;
  - 37.1.4 a register of members of the Board of Directors; and
  - 37.1.5 a register of interests of the Directors.
- 37.2 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 practicable and in any event within twenty-eight (28) days of receipt.

### **38 ADMISSION TO AND REMOVAL FROM THE REGISTERS**

The Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution. Registers will be managed by the Secretary and updated and received by the Board of Directors at least annually.

### **39 REGISTERS – INSPECTION AND COPIES**

- 39.1 The Trust shall make the registers specified in paragraph 37 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 39.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any other Member of the Trust, if the Member so requests.
- 39.3 So far as the registers are required to be made available:
  - 39.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 39.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 39.4 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.

### **40 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

- 40.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 40.1.1 a copy of the current Constitution;
  - 40.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and
  - 40.1.3 a copy of the latest Annual Report.
- 40.2 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:
  - 40.2.1 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 for Health's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.



- 40.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 40.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 40.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 40.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 40.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State for Health response to Monitor's decision), 65KC (action following Secretary of State for Health rejection of final report) or 65KD (Secretary of State for Health response to re-submitted final report) of the 2006 Act.
  - 40.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 40.2.8 a copy of any final report published under section 65I (administrator's final report).
  - 40.2.9 a copy of any statement published under section 65J (power to extend time) or 65 KC (action following Secretary of State for Health rejection of final report) of the 2006 Act.
  - 40.2.10 A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 40.3 Subject to paragraph 40.4, any person who requests a copy of or extract from any of the above documents is to be provided with a copy or extract.
- 40.4 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.

#### **41 AUDITOR**

- 41.1 The Trust shall have an Auditor.
- 41.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

#### **42 AUDIT COMMITTEE**

- 42.1 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.

#### **43 ACCOUNTS**

- 43.1 The Trust shall keep proper accounts and proper records in relation to the accounts.

- 43.2 Monitor may with the approval of the Secretary of State for Health, give directions to the Trust as to the content and form of its accounts
- 43.3 The accounts are to be audited by the Auditor.
- 43.4 The Trust shall prepare in respect of each Financial Year Annual Accounts in such form as Monitor may, with the approval of the Secretary of State for Health, direct.
- 43.5 The functions of the Trust with respect to this paragraph 43 shall be delegated to the Accounting Officer.

#### **44 ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

- 44.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 44.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor ("**the Forward Plan**").
- 44.3 The Forward Plan shall be prepared by the Board of Directors.
- 44.4 In preparing the Forward Plan, the Board of Directors shall have regard to the views of the Council of Governors.
- 44.5 Each Forward Plan must include information about:
  - 44.5.1 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
  - 44.5.2 the income it expects to receive from doing so.
- 44.6 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 44.5.1, the Council of Governors must:
  - 44.6.1 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
  - 44.6.2 notify the Board of Directors of its determination.
- 44.7 The Trust may implement a proposal 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 health service in England only if more than half of the members of Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve ~~its~~ the implementation of the proposal.

#### **45 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

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

- 45.1.1 the Annual Accounts;
  - 45.1.2 any report of the Auditor on them; and
  - 45.1.3 the Annual Report.
- 45.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 45.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 45.1 with the Annual Members' Meeting.

## **46 INSTRUMENTS**

- 46.1 The Trust shall have a seal. Its custody and use are set out in the Standing Orders.
- 46.2 The seal shall not be affixed except under the authority of the Board of Directors.

## **47 DISPUTE RESOLUTION PROCEDURE**

### *Membership disputes*

- 47.1 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 fourteen (14) days of the Secretary's decision to the Council of Governors whose decision shall be final.

### *Directorship disputes*

- 47.2 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.

### *Disputes between the Council of Governors and the Board of Directors*

- 47.3 In the event of dispute between the Council of Governors and the Board of Directors:
- 47.3.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
  - 47.3.2 if the Chair is unable to resolve the dispute he or she shall refer the dispute to the 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;
  - 47.3.3 if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

## **48 AMENDMENT OF THE CONSTITUTION**

- 48.1 The Trust may make amendments to the Constitution only if:
- 48.1.1 more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors, approve the amendments; and
  - 48.1.2 more than half of the members of the Board of Directors present and voting at a meeting of the Board of Directors approve the amendments.
- 48.2 Amendments made under paragraph 48.1 above shall take effect as soon as the conditions in that paragraph are satisfied, but the amendments shall have no effect in so far as the Constitution would, as a result of the amendments, not accord with Schedule 7 of the 2006 Act.
- 48.3 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):
- 48.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
  - 48.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment; and
  - 48.3.3 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.
- 48.4 Amendments by the Trust to its Constitution (including any amendments to the annexes attached to the Constitution) are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

## **49 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

- 49.1 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.
- 49.2 The Trust may enter into a Significant Transaction 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 entering into the transaction.

## ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraph 7)

Eligibility to become a member of a Public Constituency is available to people living within the defined catchment area of the Trust. This will include residents from the following electoral areas (as defined for the purpose of local government elections):

<b>Area</b>	<b>Electoral Wards included in area</b>	<b>Minimum number of Members</b>	<b>Number of Governors</b>
Hertfordshire County Council		100	20
The Rest of England and Wales		50	1

## ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraph 8)

Eligibility to become a member of the Staff Constituency is defined in paragraph 8 of the Constitution. The table below details the minimum number of staff within each class.

<b>Staff Class</b>	<b>Minimum Number of Members</b>	<b>Number of Governors</b>
Acute & Rehabilitation Services	20	1
Community Services	20	1
Specialist Services	20	1
Learning Disability & Forensic Services	20	1
Corporate and support services	20	1

## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraph 11)

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

### 1 COMPOSITION

1.1 The Council of Governors shall comprise:

1.1.1 21 public Governors comprised of:

- (a) 20 Governors elected by members of the area of Hertfordshire County Council; and
- (b) 1 Governor elected by members of the rest of England and Wales.

1.1.2 5 staff Governors comprised of:

- (a) 1 Governor elected by the Acute and Rehabilitation Services class;
- (b) 1 Governor elected by the Community Services class;
- (c) 1 Governor elected by the Specialist Services class;
- (d) 1 Governor elected by the Learning Disability and Forensic Services class; and
- (e) 1 Governor elected by the Corporate and Support Services class.

1.1.3 2 Local Authority Governors

1.1.4 1 Governor appointed by the University

1.1.5 11 Governors appointed by the Partner Organisations. The organisations currently specified as Partner Organisations pursuant to paragraph 9(7) of Schedule 7 of the 2006 Act that may appoint members of the Council of Governors are:

- (a) 1 Governor appointed by NHS Herts Valley Clinical Commissioning Group;
- (b) 1 Governor appointed by NHS East and North Herts Clinical Commissioning Group;
- (c) 1 Governor appointed by Hertfordshire Chamber of Commerce and Industry;
- (d) 1 Governor appointed by St Albans City and District Council working with Broxbourne Borough Council, Dacorum borough Council, East Hertfordshire Council, Hertsmere Borough Council, North Hertfordshire District Council, Stevenage Borough Council, Three Rivers district Council, Watford Borough Council, Welwyn Hatfield Borough Council, Broadland District Council;

- (e) 1 Governor appointed by the Carers in Hertfordshire;
- (f) 1 Governor appointed by Viewpoint;
- (g) 1 Governor appointed by Healthwatch;
- (h) 1 Governor appointed by the Alzheimer's Society (Governor to be appointed from within the Hertfordshire branches of the Society);
- (i) 1 Governor appointed by MIND (Governor to be appointed from within the Hertfordshire branches of the organisation);
- (j) 1 Governor appointed by Mencap ((Governor to be appointed from within the Essex branches of the Society);
- (k) 1 Governor appointed by the Housing Associations (Hightown Praetorian and Churches HA, Aldwyck HA, Circle, North Herts Homes, Watford Community HA, Origin, B3 Living (formerly Broxbourne HA), Genesis HA, Affinity Sutton HA, Network HA, Trive Homes, Howard Cottage HA, Paradigm HA, Metropolitan HA, Places for People HA, Home Group);

1.2 The number of Public Governors shall be more than half the total membership of the Council of Governors.

## **2 APPOINTED GOVERNORS**

2.1 Local Authority Governors

2.1.1 2 representatives from Hertfordshire County Council:

- (a) 1 Governor to represent Adult Care Services
- (b) 1 Governor to represent Children, schools and families

2.2 University Governor

2.2.1 1 representative from the University of Hertfordshire

## **3 PARTNER ORGANISATION GOVERNORS**

The Partner Organisations may appoint the number of Governors so specified at paragraph 1.1 of this Annex 3 to the Council of Governors, provided always that, at the time of appointment the aggregate number of Appointed Governors and staff Governors does not equal or exceed the number of Governors elected by the Public Constituency.

The Partner Organisations may be varied from time to time by the Trust, but for the avoidance of doubt such variation shall constitute an amendment to this Constitution and accordingly the provisions of Clause 48 of the Constitution shall apply.



## ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 12)

### HERTFORDSHIRE PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST (Council of Governors) Election Rules

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*Part 1 - Interpretation*

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

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

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

Monitor is the corporate body known as monitor, as provided by Section 61 of the 2012 Act.

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

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

*Part 2 – Timetable for election*

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

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

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

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

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

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

*Part 3 – Returning officer*

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

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

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

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

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

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

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

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the 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 papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

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

(2) The returning officer-

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

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

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

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The statement must show –

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

as given in their nomination paper.

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

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

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

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

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

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

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

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

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

*Part 5 – Contested elections*

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

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

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

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

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

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

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

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

- (a) that the voter is the person to whom the ballot paper was addressed,

- (b) that the voter has not marked or returned any other voting paper in the election, and
  - (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
  - (b) the address of the voter,
  - (c) the voter's signature, and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

*Action to be taken before the poll*

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

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

**23. Notice of poll –** The returning officer is to publish a notice of the poll stating–

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the 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 address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

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



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

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

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

(2) The covering envelope is to have –

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

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

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

*The poll*

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

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

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

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

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

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

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

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall

enter in a list (“the list of spoilt ballot papers”) –

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Procedure for receipt of envelopes*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Part 6 - Counting the votes*

**36. Interpretation of Part 6 –** In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

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

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

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

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

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

“stage of the count” means –

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

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

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

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

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

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

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

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

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

**39. Rejected ballot papers** – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

- (a) a transfer value calculated as set out in paragraph (4)(b) above, or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

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

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

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

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

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

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

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

**44. Exclusion of candidates – (1) If —**

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be

excluded, and

- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

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

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

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

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

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

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

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

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

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

(2) The returning officer is to make —

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which

- such transfer took place,
- (d) the order in which the successful candidates were elected, and
  - (e) the number of rejected ballot papers under each of the headings in rule stv39(1),

available on request.

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

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

*Part 8 – Disposal of documents*

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

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

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

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

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

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

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

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

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

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

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

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

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

**53. Application for inspection of certain documents relating to an election –** (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

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

by any person without the consent of the Regulator.

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

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

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

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

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

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

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

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

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

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

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

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

#### *Part 10 – Election expenses and publicity*

##### *Election expenses*

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

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

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

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

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

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

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

#### *Publicity*

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

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

as it considers necessary.

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

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

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

**59. Information about candidates for inclusion with voting documents -** (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of –

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

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

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

#### *Part 11 – Questioning elections and the consequence of irregularities*

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

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

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

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

(4) The application must –

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

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

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

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

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

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

#### *Part 12 – Miscellaneous*

**62. Secrecy** – (1) The following persons –

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

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

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

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

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

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

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

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

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

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

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



## **ANNEX 5 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **1 INTRODUCTION**

- 1.1 These Standing Orders form part of the Constitution of Hertfordshire Partnership University NHS Foundation Trust.

### **2 INTERPRETATION**

- 2.1 Save as otherwise permitted by law and subject to the Constitution, at any meeting of the Council of Governors the Chair shall be the final authority on the interpretation of the Standing Orders, (on which he should be advised by the Secretary).
- 2.2 Unless contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in the Constitution.

### **3 THE TRUST**

- 3.1 All business shall be conducted in the name of the Trust.

### **4 THE COUNCIL OF GOVERNORS**

- 4.1 The composition of the Council of Governors is set out in the Constitution.
- 4.2 The Chief Executive and any other Director or a representative of the Trust's Auditors or other advisors can attend a meeting of the Council of Governors unless the Council of Governors agrees otherwise.
- 4.3 **Role of the Public Governors** – One of the duties of the Public Governors is to facilitate communication between the Board of Directors and Members of the Trust.
- 4.4 **Role of the Chairman** – The Chairman is not a member of the Council of Governors. Under the Regulatory Framework, the Chairman presides at meetings of the Council of Governors. Where the Chairman ceases to hold office, or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Deputy Chair (Non-Executive Director appointed by the Council of Governors) shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be. References to the Chairman in these Standing Orders shall, so long as there is no Chair able to perform his duties, be taken to include references to the Deputy Chair.
- 4.5 **Role and appointment of the Lead Governor** – For the purpose of facilitating liaison between the Board of Directors and the Council of Governors, the Council of Governors shall appoint one of the Public Governors of the Trust to be Lead Governor for a term of office not exceeding the remainder of his term as Governor of the Trust. If a Governor was appointed as Lead Governor with less than one year of their remaining term of office remaining, and they did not get re-elected, a new Lead Governor appointment process would be undertaken. As such, Governors would be able to put themselves forward at any stage of their term of office. In terms of voting

methodology for the appointment, 'first past the post' will be used with the Governor with the most votes appointed to the role.

- 4.6 A Governor seeking election as Lead Governor will be required to submit a statement to the Company Secretary in support of their candidature by a specific deadline. The statement must not be more than 300 words. Statements will be circulated to all Governors by the Company Secretary by email following the expiry of the deadline for submission. Governors shall be provided with a deadline to register an electronic vote by email. The Company Secretary shall act as Returning Officer in respect of the election.
- 4.7 The Lead Governor shall facilitate direct communication between the Council of Governors and Monitor where it is deemed necessary including where the Trust is at risk of significantly breaching the terms of its Licence and the concern cannot be satisfactorily resolved, which may include but shall not be limited to the following circumstances:-
- 4.7.1 where Monitor has concerns as to the Board of Directors' leadership of the Trust and those concerns may in time lead to the use of Monitor's powers to remove the Chair or Non-Executive Directors.
- 4.7.2 where Monitor has been made aware that the process for appointment of the Chair or other members of the Board of Directors or elections for Governors or other material decisions, may not have complied with the Constitution or whilst complying with the Constitution, may be inappropriate.
- 4.7.3 where any individual Governor wishes to contact Monitor (which he must do via the Lead Governor). The Lead Governor shall take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action. The Lead Governor's details will be provided to Monitor and updated as required. Before responding to any consultations the Lead Governor will, where necessary, consult with the Council of Governors.

## **5 MEETINGS OF THE COUNCIL OF GOVERNORS**

### **5.1 Calling meetings**

- 5.1.1 Ordinary meetings of the Council of Governors shall be held at such times and places as the Chair may determine. The Chair may call a meeting of the Council of Governors at any time.
- 5.1.2 A meeting may be requisitioned by the governors by a notice to the Chair, signed by at least one-third of the whole number of the Council of Governors. If the Chair refuses to call a meeting after a requisition for that purpose has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven (7) days after such requisition has been presented to him/her, at the Trust Headquarters, such one-third or more of the members of the Council of Governor may forthwith call a meeting of the Council of Governors for the purposes of conducting that business.
- 5.1.3 Not less than three (3) and not more than four (4) meetings will be held each year. One such meeting may be combined with the Annual Members' Meeting. Meetings will normally be held in public. However the Council of Governors may resolve to exclude the public where it wishes to discuss

particular issues in private session. For the avoidance of doubt, where a meeting of the Council of Governors is combined with the Annual Members' Meeting, the meeting of the Council of Governors must be open to members of the public.

## **5.2 Notice of meetings**

- 5.2.1 Before each meeting of the Council of Governors, a notice of the meeting signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his/her behalf shall be delivered to every member of the Council, or sent by post to the usual place of residence of such governor, no less than five (5) Clear Days in advance of the meeting.

## **5.3 Notice of business to be transacted**

- 5.3.1 Before each meeting of the Council of Governors, an agenda setting out the business of the meeting, signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his behalf shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such Governor specifying the business proposed to be transacted at it so as to be available to the Governor at least six (6) Clear Days before the meeting, including weekends. Supporting papers, whenever possible, shall accompany the agenda, but will be dispatched no later than five (5) Clear Days before the meeting save in an emergency.
- 5.3.2 Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 5.3.3 In the case of a meeting called by the Governors in default of the Chair, the notice shall be signed by those respective members of the Council of Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 5.3.4 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic transmission.

## **5.4 Setting the agenda**

- 5.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders of following subsequent resolution shall be listed in an appendix to the Standing Orders).
- 5.4.2 A Governor desiring a matter to be included on an agenda shall make his request in writing to the Chair at least ten (10) Clear Days before a meeting, save in an emergency.

## **5.5 Attendance and questions from the public**

- 5.5.1 The public shall be welcome at all meetings of the Council of Governors unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper

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

5.5.2 Up to 15 minutes will be set aside at the end of each ordinary meeting of the Council of Governors to enable members of the public or other interested parties to ask questions of the Council of Governors. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Chair at least ten (10) days prior to the meeting.

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

## **5.6 Chair of the meeting**

5.6.1 At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting of the Council of Governors, or absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair, if there is one, and he is present, shall preside. If the Chair and Deputy Chair are absent, such Non-Executive Director as the Council of Governors present shall choose, shall preside. Where the Chair, Deputy Chair, and other Non-Executive Directors are all absent or have a conflict of interest, a member of the Council of Governors (to be appointed from amongst the Council of Governors) shall preside at the meeting and shall have a casting vote.

## **5.7 Notices of Motions**

5.7.1 A member of the Council of Governors desiring to move or amend a motion shall send a written notice thereof signed by at least one (1) other Governor at least fifteen (15) Clear Days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible. This paragraph shall not prevent any motion being moved during the meeting without notice, on any business mentioned on the agenda.

5.7.2 **Emergency Motions:-** Subject to the agreement of the Chair, a Governor may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Council of Governors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include or exclude the item shall be final.

## **5.8 Motions: Procedure at and during a meeting**

### **5.8.1 Who may propose**

A motion may be proposed by the Chair of the meeting or any member of the Council of Governors present at the meeting. It must also be seconded by another Governor.

### **5.8.2 Contents of motions**

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

- (a) the reception of a report;
- (b) consideration of any item of business before the Council of Governors;
- (c) the accuracy of minutes;
- (d) that the Council of Governors proceed to next business;
- (e) that the Council of Governors adjourn;
- (f) that the question be now put.

### **5.8.3 Motion once under debate**

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

- (a) an amendment to the motion.
- (b) the adjournment of the discussion or the meeting.
- (c) that the meeting proceed to the next business. (\*)
- (d) the motion be now put. (\*)
- (e) that a Governor be not further heard;
- (f) a motion resolving to exclude the public, including the press.

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

### **5.8.4 Amendments to motions**

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

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Council of Governors. The Chair's decision on this will be final

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

### **5.8.5 Rights of reply to motions**

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

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

### **5.8.6 Time limits**

The mover of a motion shall have a maximum of five minutes to propose the motion and three minutes to reply. Once a proposition has been proposed, no Governor shall speak more than once or for more than three minutes.

### **5.8.7 Withdrawal of motion or amendments**

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

### **5.8.8 Motion to rescind a resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Governor who gives it and also the signature of four (4) other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within 6 months, however the Chair may do so if he/she considers it appropriate.

If a Governor persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the Governor so he/she cannot be heard further. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may require that either the Governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

## **5.9 Chair's ruling**

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

## **5.10 Voting**

- 5.10.1 Subject to paragraph 48 of the Constitution, every question at a meeting of the Council of Governors shall be determined by a majority of the votes of the Governors present and voting on the question.
- 5.10.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A secret paper ballot may also be used if a majority of the Governors present so request.

## **5.11 E-Governance**

- 5.11.1 Where agreed by the Chair, the Council of Governors and Governor Committee (working group), decisions may be made by way of E-Governance.
- 5.11.2 The document in need of review should be sent via email and members of the Council of Governors/ members of the Governor Committee members should have a specified number of days to register their approval via email to the Secretary. The document should not require extensive discussion, although members of the Council of Governors may choose to ask specific questions to the document author. The document will require a cover sheet, clearly specifying the approval that is sought.
- 5.11.3 A document will be considered approved when a majority of the Council of Governors or Committee members have approved the document. As in a meeting of the Board of Directors, the Chair shall have the casting vote in the event of an evenly split vote. Notice of all decisions taken by E-Governance will be reported to the following formal meeting of the Council of Governors or meeting of the Governor Committee at which point they become effective.
- 5.11.4 If at least one third of the Governors present so request, the voting (other than by secret paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 5.11.5 If a Governor so requests his/her vote shall be recorded by name upon any vote (other than by secret ballot).
- 5.11.6 Except as set out in SO 5 in relation to meetings of the Council of Governors and working groups only, in no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

## **5.12 Minutes**

- 5.12.1 The minutes of the proceedings of a meeting of the Council of Governors shall be drawn up and submitted for agreement at the next meeting where they will be signed by the Chair or person presiding.
- 5.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

- 5.12.3 Minutes shall be circulated in accordance with the Council of Governors wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

### **5.13 Suspension of SOs**

- 5.13.1 The Standing Orders may not be suspended by the Council of Governors.

### **5.14 Variation and amendment to standing orders**

- 5.14.1 These Standing Orders may only be amended in accordance with the constitution.

### **5.15 Record of attendance**

- 5.15.1 The names of the Chair and Governors, and any invited attendees present at the meeting of the Council of Governors shall be recorded in the minutes.

### **5.16 Quorum**

- 5.16.1 No business shall be transacted at a meeting of the Council of Governors unless at least twelve (12) Governors are present of whom at least 4 must be elected Public Governors. If insufficient members to constitute a quorum are in attendance within 15 minutes of the time fixed for a meeting, the meeting will stand adjourned for seven (7) days and at the reconvened meeting those present will constitute a quorum.
- 5.16.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution because of the declaration of a conflict of interest ( see Standing Order 7) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

## **6 DELEGATION OF FUNCTIONS AND STATUS OF STANDING ORDERS**

### **6.1 Delegation of functions and powers**

- 6.1.1 The Council of Governors may not delegate any of its functions or powers to an individual group, committee or sub-committee, but it may appoint groups consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any working group they appoint in carrying out its duties.

### **6.2 Non-Compliance with Standing Orders**

- 6.2.1 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All members of the Council of Governors have a duty to disclose any non-



compliance with these Standing Orders to the Secretary as soon as possible

### **6.3 Committees**

- 6.3.1 Appointment to committees – Subject to such directions and guidance as may be given by Monitor, the Council of Governors may, and if directed by the Chairman shall, appoint of the council of Governors, consisting of a majority of Governors.
- 6.3.2 A committee appointed under SO 6.3.1 may, subject to such directions as may be given by Monitor or the Council of Governors, appoint sub-committees consisting wholly or partly of members of the appointing committee.
- 6.3.3 These Standing Orders shall, as far as they are applicable and except as set out below, apply with appropriate alteration to meetings of any committee or sub-committee established by the Council of Governors, in which case the term 'Chair' is to be read as a reference to the Chair of the committee as the context permits, and the term 'Governor' is to be read as a reference to a member of the committee as the context permits.
- 6.3.4 Members of committees and sub-committees of the Council of Governors may participate in meetings of such committees and sub-committees by telephone, teleconference, video or computer link. In such cases, if any person attends the meeting by telephone, teleconference, video or computer link, then SO.10 shall be amended so as to allow such a person to cast a vote verbally (such verbal vote to be recorded in the minutes).
- 6.3.5 Each committee and sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council of Governors) as the Council of Governors shall decide from time to time and shall be in accordance with any direction or
- 6.3.6 The Council of Governors shall appoint persons to each of the committees which it has formally constituted at the next meeting following any elections.
- 6.3.7 Where the Council of Governors is required to appoint persons to a Committee and/or to undertake statutory functions and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with any applicable statutory regulations and with any direction or guidance issued by Monitor.
- 6.3.8 The Council of Governors shall establish a Non-Executive Director Appointments and Remuneration Committee and other such Committees as required to assist the Council of Governors in discharging its responsibilities. The Nominations Committee shall regularly review the structure, size, an composition of the Board of Directors and make recommendations for changes where appropriate.
- 6.3.9 As part of the process for appointments, the committee will be responsible for the identification and nomination of executive directors and non-executive directors. Alternatively the Trust may establish one Nomination Committee for executive directors, and another for Non- Executive Directors.

- 6.3.10 The Lead Governor shall chair the committee.
- 6.3.11 The Nominations Committee(s) will operate in accordance with guidance set out in the NHS Foundation Trust Code of Governance issued by Monitor, or as shall from time to time be further issued by Monitor.

#### **6.4 Confidentiality**

- 6.4.1 A member a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on the matter.
- 6.4.2 A Governor or a member of a committee of the Council of Governors shall not disclose an matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee shall resolve that it is confidential.
- 6.4.3 A Governor of the Trust or a member of a committee shall not reveal or disclose the contents of papers marked 'In confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Council of Governors. This prohibition shall apply equally to the content of any discussion during the meeting which may take place on such reports or papers.
- 6.4.4 **Review of membership** – On an annual basis, each sub-committee of the Council of Governors should look to review its membership. This will be achieved through a 'call to members', which should take place after the Annual Members Meeting.
- 6.4.5 The Council will approve the final composition of each sub-committee after the review exercise has been completed.
- 6.4.6 **Procedure for electing Committee Chair** - Committee members will elect a Chair amongst the Committee membership to serve for a period of up to one year.
- 6.4.7 Committee Chairs may seek re-election after they have serviced their term of office on,. therefore, the maximum amount of time a Governor can chair a sub-committee is three (3) consecutive years.

#### **7 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS**

- 7.1 Each member of the Council of Governors shall upon being elected or appointed declare any to the Council of Governors via the Secretary any pecuniary (which includes monetary) interests, personal or family interests that he has which are relevant [and material] to the Trust. All existing members of the Council of Governors should declare such interests.
- 7.2 Interests that should be declared pursuant to paragraph 7.1 above include:
- 7.2.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);

- 7.2.2 majority or controlling share -holdings in organisations; or ownership or part-ownership of private companies, businesses or consultancies likely or possible to do business with the NHS;
  - 7.2.3 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 7.2.4 any connection with a voluntary organisation or other organisation that is seeking to contract or has contracted for NHS services or for the provision of the Trust's mandatory or authorised services; and
  - 7.2.5 pecuniary interest, direct or indirect, in a contract which the Trust has entered into or proposed to enter into;
  - 7.2.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders and banks; and
  - 7.2.7 any other commercial interest in the decision before the meeting.
- 7.3 No member of the Council of Governor should be treated as having an interest in any contract, proposed contract or other matter by reason of:
- 7.3.1 his membership of a company or other body if he has no beneficial interest in any securities of that company or other body; or
  - 7.3.2 an interest in any company, body, person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in the consideration or discussion of, or in voting on, any question with respect to that contract, proposed contract or other matter.
- 7.4 At the time the member of the Council of Governor's' interests are declared, they should be recorded in the Council of Governor's minutes. Any changes in interests should be declared at the next meeting of the Council of Governors-following the change occurring. It is the obligation of the Governors to notify the Secretary in writing within seven (7) days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the register of interest of Governors upon receipt within three (3) Clear Days.
- 7.5 Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 7.6 During the course of a meeting of the Council of Governors, if a conflict of interest is established, the Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 7.7 There is no requirement for the interests of members of the Council Governors' family or close personal relationships to be declared. However, if the family or close personal relation of the member of the Council of Governors, if living together, has any pecuniary interest, direct or indirect, in contracts or proposed contracts with the Trust, this is regarded as a relevant interest and should be declared.

- 7.8 If members of the Council of Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or the Secretary.

## **REGISTER OF INTERESTS**

- 7.9 The Secretary will ensure that a register of interests is established to record formal declarations of interests of Governors.
- 7.10 The details of Governors' interests recorded in the register of interest of Governors will be kept up to date by means of a bi-annual review of the register of interest of Governors by the secretary in which any changes to interests declared during the preceding 6 months will be incorporated.
- 7.11 The register will be available to the public and can be viewed on the Trusts public website.
- 7.12 In establishing, maintaining, updating and publicising the register of interest of Governors, the Trust will comply with all guidance issued from time to time by Monitor.

## **STANDARDS OF BUSINESS CONDUCT**

- 7.13 If it comes to the knowledge of a member of the Council of Governors, that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 7.14 A member of the Council of Governors must also declare to the Chief Executive any other employment or business or other relationship of his/hers, or of a member of his/her family or of someone with whom he/she has a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 7.15 Canvassing of members of the Council of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the SOs shall be included in application forms or otherwise brought to the attention of candidates.
- 7.16 A member of the Council of Governors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this SO shall not preclude a member of the Council of Governors from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 7.17 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 7.18 Candidates for any staff appointment shall when making application disclose in writing to the Trust whether they are related to any Governor. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

- 7.19 Every Governor shall disclose to the Chief Executive any relationship between himself/herself and a candidate of whose candidature that a member of the Council of Governors is aware.
- 7.20 On election or appointment, Governors should disclose to the Trust whether they are related to any other member of the Council of Governors or holder of any office in the Trust.
- 7.21 Where the relationship of a Governor is disclosed, the Standing Order headed 'Exclusion of Chair or Governors in proceedings on account of pecuniary interest' (SO 8) shall apply.
- 7.22 No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

## **8 PROCESS FOR THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS**

- 8.1 When a vacancy arises or is scheduled to arise within six (6) months, an Appointments and Remuneration Committee shall be convened with clear terms of reference to advise the Council of Governors on the appointment of Non-Executive Director(s).

## **9 PROCESS FOR THE APPOINTMENT OF THE CHAIR**

- 9.1 Subject to the provisions within the Constitution in relation to the appointment and removal of the Chair, the Chair shall be appointed in accordance with the process of open competition.
- 9.2 When a vacancy arises or is scheduled to arise within six (6) months, an Appointments and Remuneration Committee shall be convened with clear terms of reference to advise the Council of Governors on the appointment of the Chair.

## **10 PROCESS FOR THE APPOINTMENT OF AUDITORS**

- 10.1 The Council of Governors shall create a duly authorised Working Group which shall be composed of two (2) Public Governors, one (1) Staff Governor and one (1) Appointed Governor (the Audit Working Group)
- 10.2 The Audit Working Group will consult the Chair of the Audit Committee, the Non-Executive Directors and the Chief Executive regarding the necessary skills required.
- 10.3 The Audit Committee shall then run a formal procurement process in accordance with the Trust's own procurement rules and any existing auditor seeking re-appointment will be treated in the same manner as all other candidates.
- 10.4 The Audit Committee will liaise with the Audit Working Group to provide a shortlist of at least two appointable candidates where possible.
- 10.5 The Audit Committee and the Audit Working Group shall then present their joint recommendations to the Council of Governors.
- 10.6 The Council of Governors shall formally convey their decision to the successful firm's representatives and to the Chair of the Audit Committee and the Chief Executive.

10.7 The terms and engagement of the auditor must be approved by the Audit Committee.

## **11 CANVASSING OF AND RECOMMENDATIONS BY, MEMBERS OF THE COUNCIL IN RELATION TO APPOINTMENTS**

11.1 Canvassing of Directors or Governors of the Trust or of any Committee of the Board of Directors, directly or indirectly for any appointment with the Trust shall disqualify the candidate for such appointment. This clause of the Standing Orders shall be brought to the attention of candidates.

11.2 A member of the Council of Governors shall not solicit for any person any appointment with the Trust or recommend any person for such appointment. This clause of the Standing Orders shall not preclude a member of the Council of Governors from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

## **12 RELATIVES OF GOVERNORS**

12.1 Candidates for any staff appointment under the Trust shall when making an application disclose in writing whether they are related to any Governor. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

12.2 Every Governor of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

12.3 On election or appointment, Governors should disclose to the Council of Governors whether they are related to any other Governor or Officer. This disclosure will be asked for when Governors sign their declaration of eligibility to vote prior to their first Council of Governors meeting.

12.4 Where the relationship to a Governor is disclosed, the Standing Order 7 shall apply.

## **13 MISCELLANEOUS**

### **13.1 Standing Orders to be given to members of the Council**

It is the duty of the Secretary to ensure that existing and new member of the Council of Governors are notified of and put into a position to understand their responsibilities within the Constitution and these Standing Orders.

### **13.2 Review of Standing Orders**

These Standing Orders shall be reviewed at least every three (3) years, and more often if there are changes in the Regulatory Framework.

### **13.3 Non-Compliance of the Standing Orders**

If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around

the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All members of the Council of Governors have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

FINAL

PART 1

GOVERNORS' DECLARATION

Hertfordshire Partnership University NHS Foundation Trust (the "Trust")

I, ..... (insert name)

of ..... (insert address)

Hereby declare that I am entitled to:-

- (a) be elected to the Council of Governors as a Governor elected by *one of the public constituencies / the staff constituencies\** because I am a member of one of the *public constituencies / staff constituencies \**; or
- (b) be appointed to the Council of Governors as a governor because I have been appointed by a nominating organisation in accordance with paragraph 11.4 of the Constitution;

and that I am prevented from being a member of the Council of Governors of the Trust by paragraph 8 Schedule 7 of the National Health Service Act 2006 or under paragraph 9 of the Constitution of the Trust and that I am entitled to vote at the meetings of the Council of Governors as a governor pursuant to such appointment or election.

Signed .....

Print Name .....

Date of Declaration .....

\*delete as appropriate



## **ANNEX 6 STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

### **1. INTERPRETATION**

- 1.1 Save as otherwise permitted by law, at any meeting the Chair shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive, the Secretary or the Director of Finance as appropriate).
- 1.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in the Constitution.

### **2 THE BOARD OF DIRECTORS**

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 The Trust has the functions conferred on it by the Regulatory Framework.
- 2.3 All funds received in the Trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Board of Directors as corporate trustee shall be exercised separately and distinctly from those powers exercised by the Trust.
- 2.4 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission. Accountability for non-charitable funds held on trust is to Monitor.
- 2.5 The Board of Directors has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. Those powers and decisions are set out in the "Scheme of Delegation", which has effect as if incorporated into these Standing Orders Powers which the Board of Directors has delegated to Officers are also contained in the Scheme of Delegation.
- 2.6 Appointment and Powers of Vice-Chair and Senior Independent Director**
- 2.7 **Vice Chair** - The Council of Governors may appoint one of the Non-Executive Directors to be Vice-Chair, for such period, not exceeding the remainder of his/her term as a Director, as they may specify on appointing him-
- 2.8 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chair in accordance with the provisions of [SO 3.4].
- 2.9 Where the Chair of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chair owing to illness or any other cause, the Vice-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Vice-Chair.
- 2.10 **Role of Directors** – The Board of Directors will function as a corporate decision-making body, Executive Directors and Non-Executive Directors will be full and equal

members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

**2.11 Appointment and Powers of Senior Independent Director** - Subject to SO 2.14 below, the Chair (in consultation with the Non-Executive Directors and the Council of Governors) may appoint a Non- Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of his term as a Director, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board of Directors.

**2.12** Any Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Chair (in consultation with the Non-Executive Directors and the Council of Governors) may thereupon appoint another Non-Executive as Senior Independent Director in accordance with the provisions of Standing Order 3.9.

**2.13** The posts and duties of the Vice-Chair and Senior Independent Director will not be combined.– This decision may be reviewed at any time by the Board of Directors, in consultation with the Council of Governors.

**2.14** The role of the Senior Independent Director will include acting as a conduit for concerns to be raised by Governors if the usual mechanisms of contact and discussion have been exhausted and, subject to the agreement of the Council of Governors, making arrangements for the annual evaluation of the performance of the Chair. The process to achieve this evaluation and its outcome will be agreed with and reported to the Council of Governors.

**2.15 Joint Executive Directors** - Where more than one person is appointed jointly to an Executive Director post those persons shall count for the purpose of these Standing Orders as one person:-

**2.15.1** Either one or both of those persons may attend or take part in meetings of the Board of Directors;

**2.15.2** If both are present at a meeting of the Board of Director they should cast one vote if they agree; and

**2.15.3** in the case of disagreements no vote should be cast;

**2.15.4** the presence of either or both of those persons should count as the presence of one person for the purposes of a quorum.

## **2.16 Role of the Directors**

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

**2.16.2** Chief Executive - The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. The Chief Executive is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the

requirements of the Accounting Officer Memorandum for Trust Chief Executives.

2.16.3 Non-Executive Directors - The Non -Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of or when chairing a Committee of the Trust which has delegated powers.

2.16.4 Chair - The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors in a timely manner with all the necessary information and advice being made available to the Board of Directors to inform the debate and ultimate resolutions.

### **2.17 Schedule of Matters Reserved to the Board and Scheme of Delegation**

2.17.1 The Board of Directors may resolve that certain powers and decisions be exercised only by the Board of Directors. These powers and decisions are set out in the Schedule of Matters Reserved to the Board and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to Officers and other bodies are contained in the Scheme of Delegation.

## **3 MEETINGS OF THE BOARD OF DIRECTORS**

### **3.1 Admission of the public and the press**

3.1.1 Ordinary meetings of the Board of Directors shall be held in public at such times and places as the Board of Directors may determine unless the Board of Directors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other grounds. The Chair (or other person presiding the meeting of the Board of Directors) shall give such directions as he thinks fit in regard to the arrangement for the accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without interruption and disruption. The Chair (or other person presiding the meeting of the Board of Directors) may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting. The public and representatives of the press will be required to withdraw any meeting of the Board of Directors upon the Board of Directors resolving as follows:

*“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest or any other reason specified by the Board of Directors”*

Or:

*“That in the interests of public order the meeting adjourned for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public”*

### 3.2 Observers at meetings of the Board of Directors

- 3.2.1 The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.
- 3.2.2 Nothing in these SOs shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board of Directors.
- 3.2.3 Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Board of Directors meeting, without the express permission of the Board of Directors. This prohibition shall apply equally to the content of any discussion during meetings of the Board of Directors which may take place on such reports or papers.

### 3.3 Calling meetings

- 3.3.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.3.2 The Chair may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third or more of the whole number of the Board of Directors has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven (7) days after such a requisition has been presented to him, at the Trust Headquarters, such one third or more of the whole number of the Board of Directors may forthwith call a meeting for the purpose of conducting that business.

### 3.4 Notice of Meetings

- 3.4.1 Save in an emergency, before each meeting of the Board of Directors, a written notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least six (6) Clear Days before the meeting. Supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three (3) Clear Days before the meeting, save in emergency.
- 3.4.2 Lack of service of the notice on any one (1) Director shall not affect the validity of a meeting.
- 3.4.3 In the case of a meeting called by directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these SOs. [Failure to serve such a notice on more than three (3) Directors will invalidate the meeting.

3.4.4 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or otherwise the day following electronic or facsimile transmission.

3.4.5 In the event of an emergency giving rise to the need for an immediate meeting of the Board of Directors, failure to comply with the notice periods referred to in this SO shall not prevent the calling of such meeting without the requisite notice provided that event effort is made to make personal contact with every Director who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

3.4.6 Save in an emergency, before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three (3) Clear Days before the meeting.

### **3.5 Setting the Agenda**

3.5.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors.

3.5.2 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least fifteen (15) Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than fifteen (15) Clear Days before a meeting may be included on the agenda at the discretion of the Chair.

3.5.3 Petitions – where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next Board of Directors meetings subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for meetings of the Board of Directors.

### **3.6 Chair of Meeting**

3.6.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Vice-Chair, if there is one and he/she is present, shall preside. If the Chair and Vice-Chair are absent such Non-Executive Director as the members of the Board of Directors present shall choose shall preside.

3.6.2 If the Chair is absent from a meeting temporarily on the grounds of a declared-interest the ViceChair, if present, shall preside. If the Chair and Vice-Chair are absent, or are disqualified from participating, such Non-Executive Director as the members of the Board of Directors present shall choose shall preside.

### **3.7 Notices of Motion**

3.7.1 A member of the Board of Directors desiring to move or amend a motion shall send a written notice thereof at least fifteen (15) Clear Days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations.

- 3.7.2 Emergency Motions – Subject to the agreement of the Chair, a member of the Board of Directors may, give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one (1) hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include or exclude the item shall be final.

### **3.8 Motions: Procedure at and during a meeting**

#### 3.8.1 Who may propose

A motion may be proposed by the Chair of the meeting or any member present. It must be seconded by another member.

#### 3.8.2 Contents of motions

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

- (a) the reception of a report;
- (b) consideration of any item of business before the Board of Directors;
- (c) the accuracy of minutes;
- (d) that the Board of Directors proceed to next business;
- (e) that the Board of Directors adjourn;
- (f) that the question be now put.

#### 3.8.3 Motion once under debate

When a motion is under discussion or immediately prior to discussion it shall be open to a member of the Board of Director to move:

- an amendment to the motion;
- the adjournment of the discussion or the meeting;
- that the meeting proceed to the next business. (\*)
- the appointment of an ad hoc committee to deal with a specific item of business;
- A motion resolving to exclude the public, including press

\*In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a member of the Board of Directors who has not previously taken part in the debate and who is eligible to vote.

### 3.9 Amendments to motions

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

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board. The Chair's decision on this will be final.

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

### 3.10 Rights of reply to motions

#### 3.10.1 Amendments

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

#### 3.10.2 Substantive/original motion

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

3.11 **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer.

3.12 **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the director(s) who gives it and also the signature of three other directors. Before considering any such motion of which notice shall have been given the Board of Directors may refer the matter to any appropriate Committee or the Chief Executive for recommendation. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any director other than the Chair to propose a motion to the same effect within six (6) months; however the Chair may do so if he considers it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.13 **Chair's Ruling** – Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

3.14 **Voting** – It is not a requirement for decisions to be subject to a vote. The necessity of a vote shall be indicated by the agreement of at least one third of those attending and eligible to vote. The Chair shall be responsible for deciding whether a vote is required and what form this will take.

3.15 Where it is necessary to take a vote to determine an issue, the decision shall be determined by a majority of the votes of the directors present and eligible to vote. If the vote is equal the Chair of the meeting of the Board of Directors shall have a second and casting vote.

- 3.16 If a Director so requests, his vote shall be recorded by name upon any vote (other than by secret paper ballot).
- 3.17 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.18 A manager who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director.
- 3.19 A manager attending the meeting of the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.
- 3.20 For voting rules relating to joint Executive Directors see Standing Order-3.13.
- 3.21 **Minutes** – The Minutes of the proceedings of a meeting of the Board of Directors shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.22 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. An amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.23 Suspension of Standing Orders**
- 3.23.1 Except where this would contravene any provision of the Constitution or statutory provision or guidance issued by Monitor of rules relating to the quorum, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present, including one (1) Executive Director and two (2) Non-Executive Directors, and that a majority of those present vote in favour of suspension.
- 3.23.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.23.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the members of the Board of Directors.
- 3.29 No formal business may be transacted while Standing Orders are suspended.
- 3.30 The Audit Committee shall review every decision to suspend Standing Orders.
- 3.24 **Variation and Amendment of Standing Orders** – These Standing Orders may only be amended in accordance the Constitution.
- 3.25 **Record of Attendance** – The names and titles of the members of the Board of Directors present at the meeting shall be recorded in the minutes.
- 3.26 **Quorum** – No business shall be transacted at a meeting of the Board of Directors unless at least one third of the whole numbers of the Directors are present including at least one (1) Executive Director and two (2) Non-Executive Directors.



- 3.27 If a Director has been disqualified from participating in the discussion on any matter and / or from voting on any resolution by reason of the declaration of a conflict of interest, he / she shall no longer count towards the quorum. If a quorum is then not available for the discussion and / or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at the meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one (1) Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting of the Board of Directors (for example, when the Board of Directors considers the recommendations of the Remuneration Committee).
- 3.28 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

#### **4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

- 4.1 Subject to the Regulatory Framework and such directions as may be given by Monitor, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit- to ensure appropriate oversight by:
- 4.1.1 by a Committee or Sub-Committee appointed by virtue of SO6; or
  - 4.1.2 by an Executive Director of the Trust.
- 4.2 **Emergency Powers and urgent decisions** – The powers which the Board of Directors has retained for itself within these Standing Orders may in an emergency or for an urgent decision be exercised by the Chief Executive and the Chair, after having consulted two (2) Non-Executive Directors where possible. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for notification purpose only.
- 4.3 E-Governance**
- 4.3.1 Where agreed by any of the officers, decisions may also be made by way of e-governance.
  - 4.3.2 In such cases the document or issue in need of review should be sent via email and the Board of Directors should have a specified number of days to register their approval via email to the Secretary. The document should not require extensive discussion, although the Board of Directors may choose to ask specific questions to the document author. The email will need to clearly specify the approval that is sought.
  - 4.3.3 A document of issue will be considered approved when the majority of the Board of Directors have approved it. As in a meeting of the Board of directors, the Chair shall have the casting vote in the event of an evenly split vote. Notice of all decisions taken by e-governance will be reported to the following formal meeting of the Board of Directors or Committee meeting.
- 4.4 **Delegation to Committees** – The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by Committees or Sub-Committees, which it has formally constituted. The constitution and terms of reference of these Committees, or Sub-Committees, and their specific executive powers shall be approved by the Board of Directors.

- 4.5 **Delegation to officers** – Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to other Committees or Sub-Committees shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will retain accountability to the Board of Directors.
- 4.6 The Chief Executive shall prepare a Schedule of Matters reserved to the Board of Directors and a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Schedule of Matters reserved to the Board and the Scheme of Delegation which shall be considered and approved by the Board of Directors as indicated above.
- 4.7 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors or the Finance Director or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements or guidance issued by Monitor. Outside these statutory requirements the roles shall be accountable to the Chief Executive for operational matters.
- 4.8 The arrangements made by the Board of Directors as set out in the Schedule of Matters reserved to the Board and Scheme of Delegation shall have effect as if incorporated in these Standing Orders.
- 4.9 **Duty to report non-compliance with the Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive or Chair of the Audit Committee as soon as possible.

## 5 COMMITTEES

- 5.1 **Appointment of Committees-** Subject to the Regulatory Framework and any guidance as may be issued by Monitor, the Board of Directors may and, if so required by Monitor, shall appoint Committees of the Board of Directors. The Board of Directors shall determine the membership and terms of reference of these Committees and shall if it requires to, receive and consider reports from them. There is no requirement to hold meetings of Committees established by the Board of Directors in public.
- 5.2 A Committee appointed under SO 6.1 may, subject to any guidance issued by Monitor and to any restriction imposed by the Board of Directors, appoint Sub-Committees consisting wholly of one or more members of the Committee.
- 5.3 The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any Committees or Sub-Committees established by the Board of Directors. In which case the term “Chair” is to be read as a reference to the chairman of the Committee as the context permits, and the term “member of the Board of Director” is to be read as a reference to a member of the Committee or Sub-Committee also as the context permits

- 5.4 Each such Committee or Sub-Committee shall have such terms of reference and powers, reviewed annually, and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Committees may not delegate their executive powers to a Sub-Committee unless expressly authorised by the Board of Directors.
- 5.6 The Board of Directors may elect to change the Committee and Sub-Committees of the Board of Directors, as necessary, without requirement to amend these Standing Orders.
- 5.7 The Board of Directors shall approve the appointments to each of the Committees which it has formally constituted.
- 5.8 A member of a Committee shall not disclose a matter dealt with by, or brought before, the Committee without its permission until the Committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 5.9 A Director shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors shall resolve that it is confidential.
- 5.10 **Committees established by the Board of Directors** - The Committees established by the Board of Directors are set out below. The Board of Directors may also establish and dissolve such other Committees and Sub-Committees as required to discharge the responsibilities of the Board of Directors, i.e. Finance Committee.

5.10.1 Audit Committee

In line with Regulatory Framework, the Board of Directors will establish and constitute an Audit Committee to provide the Board of Directors with an independent and objective review of its financial and internal control systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The terms of reference will be approved by the Board of Directors and reviewed on an annual basis.

The Audit Committee will be composed of a minimum of three (3) independent non-executive directors, of which one must have significant, recent and relevant financial experience.

5.10.2 Remuneration Committee

Remuneration Committee will be established and constituted by the Board of Directors, comprised of a minimum of three (3) independent non-executive directors. The terms of reference of the Remuneration Committee will be approved by the Board of Directors and reviewed on an annual basis.

The purpose of the Remuneration Committee will be to decide on the appropriate remuneration, allowances, and terms of and conditions of service for the Chief Executive and other Executive Directors including:

- (a) All aspects of salary (including any performance-related elements/bonuses);

- (b) provisions for other benefits, including pensions and cars;
- (c) arrangements for termination of employment and other contractual terms.
- (d) to appoint the Executive Directors other than the Chief Executive.

The Remuneration Committee may also recommend and monitor the level and structure of remuneration for senior management.

## 6 DECLARATIONS OF INTEREST AND REGISTER OF INTEREST

6.1 **Declarations of Interests** – the Constitution requires all members of the Board of Directors to declare to the Board of Directors all direct and indirect interests in a proposed transaction or arrangement with the Trust. Each Director shall upon being appointed declare to the Board of Directors via the Secretary any pecuniary (which includes monetary), personal or family interests that are relevant to the Trust. All existing Directors should declare such interests.

6.2 Interests which should be declared pursuant to paragraph 6.1 above include:

- 6.2.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- 6.2.2 majority or controlling holdings in organisations, or ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the Trust or the NHS;
- 6.2.3 a position of authority in a charity or Voluntary Organisation in the field of health and social care;
- 6.2.4 any connection with a Voluntary Organisation or other organisation that is seeking to contract or has contracted for NHS services or for the provision of the Trust's mandatory or authorised services; —research funding/grants that may be received by an individual or their department;
- 6.2.5 pecuniary interest, direct or indirect, in a contract which the Trust has entered into or proposed to enter into;
- 6.2.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks-;
- 6.2.7 any other commercial interest in the decision before the meeting.

6.3 No Director shall be treated as having an interest in any contract, proposed contract or other matter by reason only:

- 6.3.1 of his membership of a company or other body if he has no beneficial interest in any securities or that company or other body; or
- 6.3.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as

likely to influence him in the consideration or discussion or, or in voting on, any question with respect to that contract, proposed contract or other matter.

- 6.4 Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered. If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair, or the Secretary.
- 6.5 At the time Directors' interests are declared, they should be recorded in the minutes of the meeting of the Board of Directors. Any changes in interests should be declared at the next-meeting of the Board of Directors following the change occurring. It is the obligation of the Director to inform the Secretary in writing within seven (7) days of becoming aware of the existence of an interest. The Secretary shall amend the register of interest of Directors upon receipt within three (3) Clear Days.
- 6.6 This Standing Order applies to Committees and Sub-Committees of the Board of Directors as it applies to the Board of Directors and also applies to members of any such Committee or Sub-Committee (whether or not he is also a Director) as it applies to a Director.
- 6.7 Directors' directorships of companies likely or possibly seeking to do business with the Trust or NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 6.8 During the course of a meeting of the Board of Directors, if a conflict of interest is established, the Director concerned should withdraw from the meeting of the Board of Directors and play no part in the relevant discussion or decision.
- 6.9 **Register of Interests** - The Secretary will ensure that a register of interests (the "Register") is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and interests which have been declared by both Executive Directors and Non-Executive Directors. Attendees of Committees of the Board of Directors who are not members of the Board of Directors will also be required to declare any such interests.
- 6.10 The details in the Register shall be reviewed and kept up to date on a regular basis, and the Register will be formally reviewed once a year.
- 6.11 The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.12 In establishing, maintaining, updating and publicising the Register, the Trust shall comply at all times with the Regulatory Framework and any guidance issued by Monitor. In the event of conflict between these Standing Orders and the Regulatory Framework, the latter shall prevail
- 6.13 For the avoidance of doubt, this Standing Order (Declaration of Interest and Register of Interest) applies to a Committee or Sub-Committee of the Board of Directors as it applies to the Board of Directors and it applies to all members of any such Committee or Sub-Committee whether or not he/she is also a Director.

## 7 CONFLICTS OF INTEREST AND PECUNIARY INTERESTS

- 7.1 During the course of a meeting of the Board of Directors if a conflict of interest is disclosed, the Director concerned shall withdraw from the meeting and take no further part in the matter under discussion.
- 7.2 Any remuneration, compensation or allowances payable to the Chair or a Director by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.3 The Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 7.3.1 of a beneficial interest in securities of a company or other body; and
  - 7.3.2 the total nominal value of those securities does not exceed £5000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
  - 7.3.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;.
- 7.4 This Standing Order shall not prohibit the Director from taking part in the consideration of discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.
- 7.5 This Standing Order applies to a Committee or Sub-Committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such Committee of Sub-Committee as it applies to a Director.

## 8 STANDARDS OF BUSINESS CONDUCT

- 8.1 **Policy** Directors and officers must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff', the Trust's Standards for Business Conduct, and any guidance issued by Monitor. In addition, they must adhere to the Trust's Counter Fraud Policy and Procedure for Staff, and any other guidance produced by the Trust.
- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a Director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Chief Executive will ensure that such declarations are formally recorded.
- 8.4 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** –Canvassing of Directors or of any committee of the Board of

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

- 8.5 A Director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.7 **Relatives of Directors or Officers** - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 8.8 Every Directors and officer of the Trust shall disclose to the Chief Executive any relationship between himself/herself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 8.9 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other Director or holder of any office within the Trust.
- 8.10 Where the relationship of an officer or another Director is disclosed, Standing Order [6] (Pecuniary Interest) shall apply.
- 8.11 No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

## **9 DIRECTORS ACTING AS TRUSTEE**

- 9.1 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust. Directors acting on behalf of the Trust as corporate trustee are acting as a quasi-trustee. Accountability for charitable funds held on trust is to the Charity Commission and to Monitor. Accountability for non-charitable funds held on trust is only to Monitor.

## **10 TENDERING AND CONTRACT PROCEDURE**

- 10.1 The procedure for making all contracts by or on behalf of the Trust shall comply with the Regulatory Framework and such directions as may be given by Monitor, these SOs and the Trust's Standing Financial Instructions.
- 10.2 Such contracts involving charitable funds shall comply with the requirements of the Charities Act- 2011.

## **11 CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

- 11.1 **Custody of Seal** - The common seal of the Trust shall be kept by the Secretary in a secure place.
- 11.2 **Sealing of Documents** - Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two (2) Directors not from the originating department, and shall be attested by them. A report of all sealings shall be made to the Board of Directors at least quarterly.
- 11.3 **Register of Sealing** – The Secretary shall keep a register in which he/she, or another manager of the Trust authorised by him/her, shall enter a record of the sealing of every document.
- 11.4 The seal should be used whenever required by law, or on the advice of the Trust's solicitor.

## 12 SIGNATURE OF DOCUMENTS

- 12.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive or his nominated deputy, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 12.2 The Chief Executive or nominated deputy shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document, not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee, sub-committee or standing committee with delegated authority.
- 12.3 In land transactions, the signing of certain supporting documents will be delegated to officers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed), which may only be signed by the Chief Executive or his nominated deputy with a second Director as set out in paragraph 12.2 of these Standing Orders.

## 13 MISCELLANEOUS

- 13.1 **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing members of the Board of Directors and officers and all new appointees are notified of and put into a position to understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.
- 13.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions, the Schedule of Matters reserved for the Board, and Scheme of Delegation shall have the effect as if incorporated into Standing Orders.
- 13.3 **Review of Standing Orders** - these Standing Orders including all documents having effect as if incorporated in them shall be reviewed as necessary by the Board of Directors.



- 13.4 **Dispute Resolution** – where a dispute arises out of or in connection with the Constitution, including the interpretation of these Standing Orders and the procedure to be followed at meetings of the Board of Directors, the members of the Board of Directors (and any other party to the dispute) shall use all reasonable endeavours to resolve the dispute as quickly as possible.
- 13.5 Where a dispute arises which involves the Chair, the dispute shall be referred to the Senior Independent Director who will use all reasonable efforts to mediate a settlement to the dispute.
- 13.6 For the avoidance of doubt, the Secretary shall deal with any membership queries and other similar questions in the first place including any voting or legislation issues and shall otherwise follow a process for resolving such matters with any procedures agreed by the Board of Directors.

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## ANNEX 7 – FURTHER PROVISIONS

### 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 Council of Governors or Board of Directors functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 1.2 The Trust must make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, members of the Council of Governors or the Board of Directors to meet all or any liabilities which are properly the liabilities of the Trust under-paragraph 1.1 above.

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## **ANNEX 8 – ANNUAL MEMBERS’ MEETINGS**

### **1 INTERPRETATION**

- 1.1 Unless a contrary intention is evident or the context required otherwise, words or expressions contained in this Annex shall bear the same meaning as in the Constitution.
- 1.2 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of this Annex (on which he/she shall be advised by the Chief Executive or the Secretary).

### **2 GENERAL INFORMATION**

- 2.1 The purpose of this Annex is to ensure that the highest standards of corporate governance and conduct are applied to all Annual Members’ Meetings.
- 2.2 All business shall be conducted in the name of the Trust.

### **3 ATTENDANCE**

- 3.1 Each Member shall be entitled to attend the Annual Members’ Meetings.

### **4 MEETINGS IN PUBLIC**

- 4.1 Annual Members’ Meetings shall be open to the public. [Nothing in this annex shall require the Council of Governors to allow members of the public and representatives of the media to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chair.]
- 4.2 The Chair may exclude any member of the public from an Annual Members’ Meeting if he is interfering with or preventing the reasonable conduct of the meeting.
- 4.3 Annual Members’ Meetings shall be held at such times and places that the Chair may determine.

### **5 NOTICE OF MEETINGS**

- 5.1 At least fourteen (14) days before each Annual Members’ Meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an officer of the Trust authorised by the Chair to sign on his behalf, shall be displayed at the Trust’s head office

### **6 SETTING THE AGENDA**

- 6.1 The Chair shall determine the agenda for Annual Members’ Meetings.

### **7 CHAIR OF ANNUAL MEMBERS’ MEETINGS**

- 7.1 The Chair, if present, shall preside and in the absence of the Chair, the Deputy Chair shall preside.

## **8 CHAIR'S RULING**

- 8.1 Statements made by any person at an Annual Members' Meeting shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

## **9 VOTING**

- 9.1 Decisions at meetings shall be determined by a majority of the votes of the Members present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 9.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands.
- 9.3 A Member may not vote at an Annual Members' Meeting unless he/she has made a declaration on the specified form and that he/she is a member of a Public Constituency.
- 9.4 The form and content of the declaration for the purposes of paragraph 9.3 above shall be specified and published by the Trust from time to time and shall be so published not less than twenty-eight (28) days prior to the Annual Members' Meeting.
- 9.5 In no circumstances may an absent Member vote by proxy.

## **10 SUSPENSION OF STANDING ORDERS**

- 10.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at an Annual Members' Meeting, provided that a majority of Members present vote in favour of suspension.
- 10.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 10.3 A separate record of matters discussed during the suspension of the Standing Orders shall be made and shall be available to the Members.
- 10.4 No formal business may be transacted while the Standing Orders are suspended.
- 10.5 The Trust's Audit Committee shall review every decision to suspend the Standing Orders.

## **11 RECORD OF ATTENDANCE**

- 11.1 The Secretary shall keep a record of the names of the Members present at an Annual Members' Meeting.

## **12 MINUTES**

- 12.1 The Minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it.

- 12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 12.3 The Minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

### **13 QUORUM**

- 13.1 No business shall be transacted at an Annual Members' Meeting unless at least 8 Members are present.
- 13.2 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other time and place as the Chair shall determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Members present at the adjourned meeting is to be the quorum.

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