

# **SOMERSET NHS FOUNDATION TRUST**

## **Constitution**



## Somerset NHS Foundation Trust Constitution

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**1. Name**

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

**2. Principal purpose**

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

2.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

2.3 The Trust may provide goods and services for any purposes related to:

2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

2.3.2 the promotion and protection of public health.

**3. Powers**

3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of its Licence.

3.2 In the exercise of its powers, the Trust shall have regard to the principles of the NHS and the Trust as set out in Annex 8.

3.3 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

3.4 Subject to any restriction contained in this Constitution or in the 2006 Act, and to paragraph 3.5 below, any of these powers may be delegated to a committee of directors or to an executive director.

3.5 Where the Trust is exercising functions of managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an Executive Director of the Trust, nor an employee of the Trust. For the avoidance of doubt a Non - Executive Director is not an employee of the Trust.

#### **4. Other Purposes**

- 4.1 The purpose of the Trust may include education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and the terms of its Licence.
- 4.2 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.
- 4.3 The Trust may fulfil the social care functions of any local authority as specified by an agreement made under Section 75 of the 2006 Act or otherwise.
- 4.4 The Trust may also carry on activities other than those mentioned above, subject to the Regulatory Framework, for the purpose of making additional income available in order to carry out its principal purpose better.

#### **5. Membership and constituencies**

- 5.1 It is a requirement that the Trust, in deciding membership constituencies, shall have regard to the need for those eligible to be representative of those to whom the Trust provides services.
- 5.2 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 5.2.1 a public constituency
  - 5.2.2 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.
- 6.2 Subject to paragraph 8.7 below, applicants for membership of the Trust must complete and sign a hard copy of an application or submit an electronic copy of an application form and may be required to provide such further evidence as the Secretary may reasonably require in determining eligibility. Application for membership is subject to the provisions set out in Annex 8.
- 6.3 Subject to eligibility a Member may change their Constituency upon application to the Trust.

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

## **8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the trust provided:
  - 8.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who are employed by a designated organisation or designated Trust subcontractor, and 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. For the avoidance of doubt, this does not include voluntary organisations or those who assist or provide services to the Trust on a voluntary basis).
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the “Staff Constituency”.
- 8.4 The Staff Constituency shall not be divided into classes.
- 8.5 The minimum number of members in the Staff Constituency is specified in Annex 2.
- 8.6 For the purposes of paragraphs 8.1 and 8.2 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been

continuously employed by the Trust or has exercised functions for the purposes of the Trust.

8.7 An individual who is:

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

8.7.2 invited by the Trust to become a member of the Staff Constituency;

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

8.8 An eligible individual under paragraph 8.1 who has previously informed the Trust that they do not wish to become a member of the Staff Constituency under paragraph 8.7 above may become a Member upon entry to the membership register pursuant to an application by them.

8.9 On receipt of an application for membership as set out in paragraph 8.8 above, and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered in the Trust's Register of Members.

8.10 An individual who is no longer employed by the Trust shall have their Membership of the Trust transferred to the Public Constituency upon termination of their employment unless they inform the Trust they do not wish to continue their Membership.

9. **NOT USED**

10. **NOT USED**

11. **Restriction on membership**

11.1 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.

11.2 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.

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



**12. Annual Members' Meeting**

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

**13. Council of Governors – composition**

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

**14. Council of Governors – election of governors**

- 14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules. Elections for Elected Governors shall be conducted using the First Past the Post (FPP) system.
- 14.2 The Model Election Rules as published from time to time by the Department of Health, the NHS Foundation Trust Network or its successor body, form part of this constitution. The Model Election Rules are attached at Annex 4.
- 14.3 A subsequent variation of the Model Election Rules by the Department of Health, the NHS Foundation Trust Network or its successor body, shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution (amendment of the constitution). For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.
- 14.4 An election, if contested, shall be by secret ballot.
- 14.5 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 Rules for Elections they have made a declaration in the forms specified in Annex 6. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

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

### **15.1 Elected Governors**

15.1.1 An elected governor may hold office for a period of up to 3 (three) years.

15.1.2 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.

15.1.3 An elected governor shall be eligible for re-election at the end of their term, subject to the Terms of Office set out in Annex 6.

15.1.4 An Elected Governor may hold office for a maximum of 9 (nine) consecutive years.

15.1.5 An Elected Governor may hold office for a maximum of 9 (nine) consecutive years, except when the end of their final term occurs when the Trust is in the process of a major transaction for which the Council of Governors are due to vote on the appropriateness of the transaction. In this case, the Elected Governor will be eligible for re-election for a maximum of one additional year.

### **15.2 Appointed Governors**

15.2.1 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.

15.2.2 An appointed governor shall be appointed for a period of up to 3 (three) years.

15.2.3 An appointed governor shall be eligible for re-appointment at the end of their term.

15.2.4 An Appointed Governor may hold office for a maximum of 9 (nine) consecutive years.

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

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

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

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

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

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

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

**17. Council of Governors – duties of governors**

17.1 The general duties of the Council of Governors are:

17.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

17.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.

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

**18. Council of Governors – meetings of governors**

18.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26 below) or, in their absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 27 below)] shall chair at meetings of the Council of Governors and the person chairing the meeting shall have a casting vote.

18.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in accordance with the exclusions identified in Annex 6.

18.3 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.

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

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

**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 they become aware of it.

20.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust, in accordance with the rates paid to employees and the Trust's policy on travelling and subsistence expenses as may be varied from time to time.

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

Further provisions with respect to the Council of Governors are set out in Annex 5 and these include:

- Council of Governors: Terms of Office;
- Council of Governors: Disqualification and Removal
- Council of Governors: Objectives;

- Council of Governors: Roles and Responsibilities;
- Remuneration;
- Vacancies;
- Council of Governors: Declarations.

**23. Board of Directors – composition**

- 23.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 23.2 The Board of Directors is to comprise:
- 23.2.1 a non-executive Chairman
  - 23.2.2 up to a maximum of eight other non-executive directors; and
  - 23.2.3 up to a maximum of eight executive directors.
- 23.3 One of the executive directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the executive directors shall be the Finance Director.
- 23.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One of the executive directors is to be a registered nurse or a registered midwife.
- 23.8 In the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in their absence, the Deputy Chairman), shall have a second or casting vote at meetings of the Board of Directors in accordance with the Standing Orders for the Board of Directors.
- 23.9 If, in spite of the Chairman's casting or second vote, there remained an imbalance at Board meetings between the number of Executive and Non Executive Directors, if a formal vote is required, the maximum number of Executive votes to be counted will be equivalent to the number of Non Executive Directors present at the meeting of the Board of Directors in

accordance with the Standing Orders for the Board of Directors.

23.10 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

23.11 Subject to the provisions of paragraphs 24.2 to 24.7 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number of Directors is within the range set out in paragraph 23.2 above.

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

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

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

A person may be appointed as a non-executive director only if:

25.1 They are a member of a Public Constituency,

25.2 Where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university, and

They are not disqualified by virtue of paragraphs 29 and 30 below.

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

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.

26.2 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

26.3 Without prejudice to paragraph 26.1 above and subject to the provisions of paragraph 23, the process for appointing new Non-Executive Directors and the Chairman will be as set out in Annex 8.

**27. Board of Directors – appointment of deputy chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a deputy chairman, on the recommendation of the Chairman in accordance with SO 3.11 of Annex 7.

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

28.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

28.2 The appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

28.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other executive directors.

**29. Fit and Proper Persons Regulation: Care Quality Commission Regulation 5**

29.1 The Trust is required to comply with the Fit and Proper Persons Regulation which state that unless an individual satisfies all the requirements set out in 29.2, the Trust must not appoint or have in place an individual:

- (a) As a director, or
- (b) Performing the functions of, or functions equivalent to the functions of, such a director.

The Trust has determined that the individuals referred to in (a) and (b) include: Executive Directors, Non-Executive Directors, Associate Directors and Deputy Directors.

29.2 The requirements referred to in paragraph 29.1 are that:

- (a) The individual is of good character;
- (b) The individual has the qualifications, competence, skills and experience which are necessary for the relevant office or position or the work for which they are employed;

- (c) The individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed;
- (d) The individual has not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether lawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity, and
- (e) None of the grounds of unfitness specified in Part 1 of Schedule 4 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, and included in paragraph 29 of the Constitution, apply to the individual.

29.3 In assessing the individual's character for the purposes of paragraph 29.2(a), the matters considered must include those listed in Part 2 of Schedule 4 the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, which have been included in paragraph 29 to the Constitution.

29.4 The following information must be available to be supplied to the Care Quality Commission in relation to each individual who holds an office or position referred to in paragraph (28.1)(a) or (28.1)(b):

1. Proof of identity including a recent photograph;
2. Where required for the purposes of an exempted question in accordance with section 113A(2)(b) of the Police Act 1997, a copy of a Disclosure and Barring certificate issued under section 113A of that Act together with, after the appointed day and where applicable, the information mentioned in section 30A(3) of the Safeguarding Vulnerable Groups Act 2006 (provision of barring information on request);
3. Where required for the purposes of an exempted question asked for a prescribed purpose under section 113B(2)(b) of the Police Act 1997, a copy of an enhanced Disclosure and Barring certificate issued under section 113B of that Act together with, where applicable, suitability information relating to children or vulnerable adults;



4. Satisfactory evidence of conduct in previous employment concerned with the provision of services relating to:
  - (a) Health or social care, or;
  - (b) Children or vulnerable adults,
5. Where a person (P) has been previously employed in a position whose duties involved work with children or vulnerable adults, satisfactory verification, so far as reasonably practicable, of the reason why P's employment in that position ended;
6. In so far as it is reasonably practicable to obtain, satisfactory evidence of any qualification relevant to the duties for which the person is employed or appointed to perform;
7. A full employment history, together with a satisfactory written explanation of any gaps in employment;
8. Satisfactory information about any physical or mental health conditions which are relevant to the person's capability, after reasonable adjustments are made, to properly perform tasks which are intrinsic to their employment or appointment for the purpose of the regulated activity;
9. For the purposes of this section:
  - (a) "the appointed day" means the day on which section 30A of the Safeguarding Vulnerable Groups Act 2006 comes into force;
  - (b) "satisfactory" means satisfactory in the opinion of the Commission;
  - (c) "suitability information relating to children or vulnerable adults" means the information specified in sections 113BA and 113BB respectively of the Police Act 1997.
10. Such other information as is required to be kept by the Trust under any enactment which is relevant to that individual.

29.5 Where an individual who holds an office or position referred to in paragraph 29.1(a) or (b) no longer meets the requirements in paragraph 29.2 the Trust must:

- (a) Take such action as is necessary and proportionate to ensure that the office or position in question is held by an individual who meets such requirements; and;
- (b) If the individual is a health care professional, social worker or other professional registered with a health care or social care regulator, inform the regulator in question.

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

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

- 30.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 30.1.2 The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland;
- 30.1.3 The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986;
- 30.1.4 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 30.1.5 The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
- 30.1.6 The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment;
- 30.1.7 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without

the option of a fine) was imposed on them;

- 30.1.8 A person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals;
- 30.1.9 The person has been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity, or discharging any functions relating to any office or employment with a service provider;
- 30.1.10 A person whose tenure of office as a chairman or member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the health service;
- 30.1.11 A person who has had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list;
- 30.1.12 A person who has within the preceding (2) two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 30.1.13 A person who is a governor of another NHS foundation trust (unless they are appointed by a Partnership Organisation which is a Health Service Body). Any executive or non-executive director who has a pecuniary or other interest in another health or social care related organisation must make this known to the Chairman and must excuse themselves from Board discussion and proceedings if they believe that a conflict of interest exists at any time during the business of the Board;
- 30.1.14 A person who holds an office or paid work with HealthWatch;
- 30.1.15 A person who is a member of a local authority Health Overview and Scrutiny Committee;
- 30.1.16 A person who has failed without reasonable cause to

fulfill any training requirements established by the Board of Directors.

- 30.1.17 A person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 30.1.18 A person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 30.1.19 A person who is the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register; or
- 30.1.20 A person who by reference to information revealed by a Disclosure and Barring Service check is considered by the Trust to be inappropriate on the grounds that their appointment may adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute or
- 30.1.21 A person who is unable or unwilling to sign an annual declaration that they continue to meet the Care Quality Commission's Fit and Proper Person regulations.

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

- 31.1 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.
- 31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 31.3 Further provisions are set out in Annex 7.

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

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

**33. Board of Directors - conflicts of interest of directors**

- 33.1 The duties that a director of the Trust has by virtue of being a director include in particular:
- 33.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
  - 33.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if:
- 33.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2 The matter has been authorised in accordance with the constitution.
- 33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.3.1 In sub-paragraph 33.1.2, “third party” means a person other than –
  - 33.3.2 The Trust, or
  - 33.3.3 A person acting on its behalf.
- 33.4 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.
- 33.5 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.6 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.7 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.8 A director need not declare an interest:
- 33.8.1 If it cannot reasonably be regarded as likely to give

rise to a conflict of interest;

33.8.2 If, or to the extent that, the directors are already aware of it;

33.8.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –

33.8.3.1 By a meeting of the Board of Directors, or

33.8.3.2 By a committee of the directors appointed for the purpose under the constitution.

#### **34. Board of Directors – remuneration and terms of office**

34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.

34.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

#### **35. Registers**

The Trust shall have:

35.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;

35.2 a register of members of the Council of Governors;

35.3 a register of interests of governors;

35.4 a register of directors; and

35.5 a register of interests of the directors.

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

##### **Register of Members**

36.1 The Secretary shall maintain the Register of Members in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each member and the

constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraph 37 below. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

#### **Register of Governors**

36.2 The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted which may be that of the Secretary.

#### **Register of Interests of the Governors**

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

#### **Register of Directors**

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

#### **Register of Interests of Directors**

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

36.6 Further arrangements for admission to and removal from the registers are set out in Annexes 5 and 8.

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

37.1 The Trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

37.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.

- 37.3 So far as the registers are required to be made available:
- 37.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 37.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 37.4 If the person requesting a copy or extract is not a member of the trust, the Trust may impose a reasonable charge for doing so.

**38. Documents available for public inspection**

- 38.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 38.1.1 a copy of the current constitution,
  - 38.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
  - 38.1.3 a copy of the latest annual report
  - 38.1.4 a copy of any notice given under section 52 of the 2006 Act.
- 38.2 The Trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 38.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 38.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 38.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.



- 38.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
- 38.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 38.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 38.2.8 a copy of any final report published under section 65I (administrator's final report),
- 38.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 38.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

### **39. Auditor**

- 39.1 The Trust shall have an auditor.
- 39.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 39.3 The Auditor is to carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS Improvement (Monitor), or its successor body, on standards, procedures and techniques to be adopted.
- 39.4 The Board of Directors may resolve that an "external auditor" be appointed to review and publish a report on any other aspects of the Trust's performance. Any such "external

auditor” is to be appointed by the Council of Governors.

**40. Audit committee**

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

**41. Accounts**

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

41.2 NHS Improvement (Monitor) may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

41.3 The accounts are to be audited by the Trust’s auditor.

41.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement (Monitor) may with the approval of the Secretary of State direct.

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

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

42.1 The Trust shall prepare an Annual Report and send it to NHS Improvement (Monitor).

42.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement (Monitor).

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

42.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

42.5 Each forward plan must include information about:

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

42.5.2 the income it expects to receive from doing so.

- 42.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must:
- 42.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
  - 42.6.2 notify the directors of the Trust of its determination.
- 42.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

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

- 43.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 43.1.1 the annual accounts
  - 43.1.2 any report of the auditor on them
  - 43.1.3 the annual report.
- 43.2 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.
- 43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

**44. Mergers etc. and Significant Transactions**

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

44.2 A “Significant transaction” means a transaction for anything other than the service contract with the Somerset Clinical Commissioning Group that meets any of the criteria set out below:

- assets – the gross asset value (total of the fixed assets and current assets) of the asset which is subject to the transaction is greater than 25% of the Trust Gross Assets prior to the transaction at the time the Board seeks approval from the Governors;
- income – either the forecast annual income attributable to the Asset associated with the transaction or the contract value associated with the transaction is greater than 25% of the Trust’s gross annual income forecast by the Trust for the current financial year prior to the transaction at the time the Board seeks approval from the Governors;
- capital – the gross capital of the company or business being acquired/divested is greater than 25% of what would be the Trust forecasted total capital following completion of the transaction or the effects on the total capital of the Trust resulting from a transaction greater than 25% of that total capital. For this purpose Gross Capital equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets. Total Capital of the Trust equals taxpayers’ equity in the Trust.

**45. Instruments**

45.1 The Trust shall have a seal.

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

**46. Amendment of the constitution**

46.1 The Trust may make amendments of its constitution only if:

46.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and

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

- 46.2 Amendments made under paragraph 46.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 46.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 46.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
- 46.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 46.4 Amendments by the Trust of its constitution are to be notified to NHS Improvement (Monitor), or its successor body. For the avoidance of doubt, NHS Improvement (Monitor)'s, or its successor body's, functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

## **47. Interpretation and definitions**

- 47.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012
- 47.2 Words importing the singular shall import the plural and vice-versa.
- 47.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 47.4 References to legislation also includes all regulations, orders, statutory guidance or directives.
- 47.5 Headings are for ease of reference only and are not to affect interpretation.

- 47.6 All Annexes referred to in this Constitution form part of it.
- 47.7 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex to this Constitution it shall be a reference to a paragraph in that annex unless the contrary is expressly stated or the context otherwise so requires.

47.8 In this Constitution:  
the **2006 Act** is the National Health Service Act 2006.

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

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

**"Annex"**

followed by a number, means the Annex to this Constitution so numbered;

**"Annual Accounts"**

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

**Annual Members Meeting** is defined in paragraph 12 of the constitution;

**"Appointed Governor"**

means a Somerset Clinical Commissioning Group Governor, a Local Authority Governor, or a Partnership Organisation Governor as specified in paragraph 4 of Annex 3;

**“Appointments Panel”**

means a Panel of the Council of Governors appointed pursuant to Annex 8;

**"Annual Report"**

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

**"Area of the Trust"**

means the area, consisting of all the areas, specified in Annex 1, as an area for the Public Constituencies;

**"Audit Committee"**

means a committee of the Board of Directors as established pursuant to paragraph 40 of this Constitution;

**"Auditor"**

means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 39 of this Constitution;

**"Board of Directors"**

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

**"British Islands"**

means the United Kingdom, the Channel Islands and the Isle of Man as defined in the Interpretation Act 1978. The Republic of Ireland is not included in this definition.

**"Chairman"**

means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chairman" shall be deemed to include the Deputy Chairman or any other Non-Executive Director appointed if the Chairman is absent from the meeting or is otherwise unavailable;

**"Chief Executive"**

means the Chief Executive of the Trust;

**"Constitution"**

means this Constitution together with the Annexes attached hereto;

**"Council of Governors"**

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

**"Deputy Chairman"**

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

**"Designated Organisation"**

means an organisation registered as such in the register of Governors which provides staff who exercise functions on behalf the Trust;

**"Director"**

means a member of the Board of Directors;

**"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.

**"District Councils"**

means:

- (a) Mendip District Council, Council Offices, Cannards Grave Road, Shepton Mallet, Somerset BA4 5BT;
- (b) Sedgemoor District Council, Bridgwater House, Kings Square, Bridgwater TA6 3AR;
- (c) South Somerset District Council, Council Offices, Brympton Way, Yeovil, Somerset BA20 2HT;
- (d) Somerset West and Taunton District Council, The Deane House, Belvedere Road, Taunton, Somerset, TA1 1HE

or their successor bodies;

**"Elected Governor"**

means a Public Governor or a Staff Governor;

**"Executive Director"**

means an Executive Director of the Trust;

**"Finance Director"**

means the Finance Director of the Trust;

**"Financial Year"**

means each period of twelve months beginning with 1 April;

**"Forward Plan"**

means the document prepared by the Foundation Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;

**"Governor"**

means a Governor of the Council of Governors and includes both Appointed Governors and Elected 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 Governor, 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 275 of the 2006 Act and includes the following organisations, or their successors:



- strategic health authority;
- clinical commissioning group;
- NHS trust,
- special health authority; and
- NHS foundation trust. “

**"Immediate Family Member"**

means either:

- (a) A partner (of whatever gender), whether married, in a civil partnership (if defined in the Civil Partnership Act 2004), or some other similar arrangement, whether or not residing together in the same household, or;
- (b) A child or adopted child; including a biological child of one or both of two parties to a marriage or relationship or any other child who has been treated by one or both of those parties as a child of their family; or
- (c) A sibling or step-sibling; or
- (d) A parent or step-parent; or
- (e) A partner (as defined in sub-paragraph (a) above, of a person identified in sub-paragraphs (b), (c), or (d).;

**“HealthWatch”**

means the independent consumer champion for health and social care in England, or any statutory successor

**“Licence”**

means the Trust’s Provider Licence issued by NHS Improvement (Monitor). The Licence includes licence conditions and standards which will need to be adhered to by the Trust.

**“Local Authority”**

means a local authority that may appoint a Local Authority Governor and which is listed in Annex 3;

**"Local Authority Governor"**

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

**"Local Authority Partnership Agreement"**

means an agreement made under section 75 of the 2006 Act;

**"Member"**

means a member of the Trust;

**"Model Rules for Elections"**

means the election rules set out in Annex 4;

**"NHS Improvement"** is the body corporate known as NHS Improvement (Monitor), as provided by Section 61 of the 2012 Act.

**"NHS Foundation Trust Code of Governance"**

means the best practice advice published by Monitor on 10 March 2010, and as may be amended, varied or replaced by NHS Improvement (Monitor) or its successor body from time to time;

**"Non-Executive Director"**

means a Non-Executive Director of the Trust. For the avoidance of doubt, the Chairman is a Non-Executive Director;

**"Officer"**

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

**"Partnership Organisation"**

means an organisation that may appoint Partnership Governors and which is listed in Annex 4 to this Constitution;

**"Partnership Organisation Governor"**

means a Governor of the Council of Governors appointed by a Partnership Organisation other than: a Public Governor, Staff Governor, CCG Governor; or Local Authority/District Council Governor.

**"Public Constituency"**

has the meaning ascribed to it in paragraph 7 of this Constitution;

**"Public Governor"**

means a Governor of the Council of Governors elected by the Members of a Public Constituency;

**"Secretary"**

means the Secretary of the Trust or any other person other than a Governor, the Chief Executive or the Finance Director of the Trust, appointed by the NHS Trust or (as the case may

be) the Trust to perform the roles and responsibilities of the Secretary as set out in Annex 8 and Appendix A of the NHS Foundation Trust Code of Governance;

**"Sex Offenders Order"**

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

**"Sex Offenders Register"**

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

**"Somerset Clinical Commissioning Group Governor"**

means a Governor of the Council of Governors appointed by Somerset Clinical Commissioning Group;

**"Staff Constituency"**

has the meaning ascribed to it in paragraph 8 of this Constitution;

**"Staff Governor"**

means a Governor of the Council of Governors elected by the members of the Staff Constituency;

**"Standing Orders"**

means the Standing Orders of the Council of Governors or the Board of Directors;

**"Trust"**

means Somerset NHS Foundation Trust;

**"Trust Premises"**

means any premises owned, leased or occupied under licence by the Trust for the purposes of providing or supporting its services as specified within the Trust's Provider Licence and the schedules to the Licence.

**"Vexatious Complainant"** is someone who persists in pursuing a complaint where the NHS Complaints procedure at the NHS Trust or (as the case may be) the Trust, has been fully implemented and exhausted (as defined in the Trust's policy for managing unsatisfied complaints);

**"Voluntary Organisation"**

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

**"Volunteer"**

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

## ANNEX 1 – THE PUBLIC CONSTITUENCIES

<b>Name of Constituency</b>	<b>For residents of</b>	<b>Minimum number of members</b>	<b>Seats on Council of Governors</b>
Mendip	Mendip District Council area	150	4
Sedgemoor	Sedgemoor District Council area	100	4
South Somerset	South Somerset District Council area	150	4
Somerset West and Taunton Council	Somerset West and Taunton District Council	300	10
Outside Somerset	England and Wales outside Somerset	50	1
<b>Totals</b>	<b>Minimum Membership</b>	<b>750</b>	
	<b>Governors</b>		<b>23</b>

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

(Ref. Paragraph 8)

### **1. MINIMUM NUMBER OF MEMBERS**

1.1 There will be a single Staff Constituency with at least 1,200 members.

### **2. NUMBER OF SEATS ON COUNCIL OF GOVERNORS**

2.1 The number of Governors to be elected by the Staff Constituency is 10 (ten).

### **3. STAFF GOVERNOR ELIGIBILITY**

3.1 Only staff members with a substantive contract will be able to stand for election as a Staff Governor.

### **4. EXERCISE OF FUNCTIONS**

4.1 For the purposes of paragraph 8.2 of the Constitution it shall be for the Trust in its absolute discretion to determine:

- (a) The Designated Organisations; and
- (b) Whether an individual exercises functions for the purposes of the Trust.

## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 14.2 and 14.3)

### 1. COMPOSITION

1.1 The Composition of the Council of Governors shall be as follows:

		Electing/Appointing Body	Elected Governors	Appointed Governors
<b>1.1</b>	<b>Public Governors</b>			
	1.1.1	Mendip District Council area	4	
	1.1.2	Sedgemoor District Council area	4	
	1.1.3	South Somerset District Council area	4	
	1.1.4	Somerset West and Taunton District Council	10	
	1.1.5	England and Wales outside Somerset	1	
<b>1.2</b>	<b>Staff Governors</b>			
	Staff Constituency		10	
<b>1.3</b>	<b>CCG Governor</b>			
	Somerset Clinical Commissioning Group			1
<b>1.4</b>	<b>Local Authorities' Governors</b>			
	1.5.1	Somerset County Council		1
	1.5.2	District Councils		2
<b>1.5</b>	<b>Partnership Organisations' Governors</b>			
	1.6.1	Somerset GP Board		1
	1.6.2	Carers UK		1
	1.6.3	Taunton and Somerset Samaritans		1
	1.6.4	Universities		1
		<b>Total</b>	<b>33</b>	<b>8</b>

1.2. The Council of Governors shall comprise Governors who are:

- 1.2.1 Elected by the respective constituencies in accordance with the provisions of this Constitution; or
- 1.2.2 Appointed in accordance with paragraph 4 of this Annex 3 below.

1.3. The Council of Governors shall at all times be constituted so that more than half the Governors are elected by members of the Trust other than those who are members of the Staff Constituency.

2. **NOT USED**

3. **NOT USED**

4. **APPOINTED GOVERNORS**

4.1 The following organisations, as listed in paragraph 1.1, shall be entitled to appoint Governors:

4.1.1 **Clinical Commissioning Group Governors**

4.1.1.1 **Somerset** Clinical Commissioning Group or its successor organisation shall be entitled to appoint 1 (one) Governor by notice in writing signed by the Chief Executive or the Chairman of such Trust and delivered to the Secretary.

4.1.2 **Local Authorities' Governors**

4.1.2.1 **Somerset County Council** or its successor organisation shall be entitled to appoint 1 (one) Governor by notice in writing signed by the Leader of the Council or a member of the Council executive and delivered to the Secretary.

4.1.2.2 The **District Councils** in Somerset or their successor organisations shall agree between themselves which of them may appoint 2 (two) Governors by notice in writing signed by the leaders of the nominating District Councils, copied to all the other District Councils in Somerset and delivered to the Secretary. In the absence of any such agreement as to which District Council will appoint a Governor, the Trust may nominate two of the District Councils.

4.1.3 **Partnership Organisations' Governors**

4.1.3.1 Somerset GP Board shall be entitled to appoint 1 (one) Governor by notice in writing signed by an authorised officer of the Board and delivered to the Secretary.



- 4.1.3.2 **Carers UK** shall be entitled to appoint 1 (one) Governor by notice in writing signed by an authorised officer of the organisation and delivered to the Secretary.
  - 4.1.3.3 **Taunton and Somerset Samaritans** shall be entitled to appoint 1 (one) Governor by notice in writing signed by an authorised officer of the organisation and delivered to the Secretary.
  - 4.1.3.4 Bournemouth University (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003), whose address is Fern Barrow, Talbot Campus, Poole, Dorset, BH12 5BB; University of Bristol, (established under Royal Charter granted on 17 May 1909) whose address is Senate House, Tyndall Avenue, Bristol, BS8 1TH; University of Plymouth (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003) whose address is Drake Circus, Plymouth, PL4 8AA, (together the "Universities") or their respective successor organisations shall be entitled to appoint 1 (one) Governor between them by notice in writing signed by a Vice Chancellor or a pro Vice Chancellor from each university, and delivered to the Secretary.
- 4.2 All Appointed Governors shall be named individuals. The organisations entitled to appoint Governors shall agree one named deputy to attend meetings in the absence of the appointed governor by notice in writing signed by an authorised officer of the organisation and delivered to the Secretary.
  - 4.3 The Council of Governors retains the right to review and amend the organisations entitled to appoint a Governor.

## **ANNEX 4 - MODEL ELECTION RULES**

### **Model Rules for Elections to the Council of Governors**

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#### **PART 1: INTERPRETATION**

1. Interpretation

#### **PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

#### **PART 3: RETURNING OFFICER**

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

#### **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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

#### **PART 5: CONTESTED ELECTIONS**

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

#### **Action to be taken before the poll**

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope

26. E-voting systems

### **The poll**

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

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

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

### **PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

### **PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
53. Declaration of result for uncontested elections

## **PART 8: DISPOSAL OF DOCUMENTS**

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
- 57. Retention and public inspection of documents
- 58. Application for inspection of certain documents relating to election

## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

- FPP59. Countermand or abandonment of poll on death of candidate
- STV59. Countermand or abandonment of poll on death of candidate

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### **Expenses**

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

### **Publicity**

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## **PART 1: INTERPRETATION**

### **1. INTERPRETATION**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

“NHS Improvement” means the corporate body known as NHS Improvement (Monitor) as provided by section 61 of the 2012 Act;

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

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

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

“telephone short code” means a short telephone number used for the

purposes of submitting a vote by text message;

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

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

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

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

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

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

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

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

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

## **PART 2: TIMETABLE FOR ELECTIONS**

### **2. TIMETABLE**

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

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

### **3. COMPUTATION OF TIME**

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

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

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

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

### **PART 3: RETURNING OFFICER**

#### **4. RETURNING OFFICER**

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

#### **5. STAFF**

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

#### **6. EXPENDITURE**

- 6.1 The corporation is to pay the returning officer:
  - (a) Any expenses incurred by that officer in the exercise of their functions under these rules;
  - (b) Such remuneration and other expenses as the corporation may determine.

#### **7. DUTY OF CO-OPERATION**

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



## **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

### **8. NOTICE OF ELECTION**

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

### **9. NOMINATION OF CANDIDATES**

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- (a) Is to supply any member of the corporation with a nomination form, and;
  - (b) Is to prepare a nomination form for signature at the request of any member of the corporation;

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

an electronic format.

## **10. CANDIDATE'S PARTICULARS**

10.1 The nomination form must state the candidate's:

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

## **11. DECLARATION OF INTERESTS**

11.1 The nomination form must state:

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

## **12. DECLARATION OF ELIGIBILITY**

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

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

## **13. SIGNATURE OF CANDIDATE**

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

- (a) They wish to stand as a candidate;

- (b) Their declaration of interests as required under rule 11, is true and correct, and;
- (c) Their declaration of eligibility, as required under rule 12, is true and correct.

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

#### **14. DECISIONS AS TO THE VALIDITY OF NOMINATION**

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

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

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

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

14.3 The returning officer is to examine each nomination form as soon as is practicable after they have received it, and decide whether the candidate has been validly nominated.

- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

## **15. PUBLICATION OF STATEMENT OF CANDIDATES**

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

## **16. INSPECTION OF STATEMENT OF NOMINATED CANDIDATES AND NOMINATION FORMS**

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

## **17. WITHDRAWAL OF CANDIDATES**

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

## **18. METHOD OF ELECTION**

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) The candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and;
  - (b) The returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by them in consultation with the corporation.

## **PART 5: CONTESTED ELECTIONS**

### **19. POLL TO BE TAKEN BY BALLOT**

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

## **20. THE BALLOT PAPER**

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

## **21. THE DECLARATION OF IDENTITY (PUBLIC AND PATIENT CONSTITUENCIES)**

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

- (a) That the voter is the person:
  - (i) To whom the ballot paper was addressed, and/or
  - (ii) To whom the voter ID number contained within the e-voting information was allocated,

- (b) That they have not marked or returned any other voting information in the election, and
- (c) The particulars of their qualification to vote as a member of the constituency or class within the constituency for which the election is being held,  
  
("declaration of identity")

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

- 21.2 The voter must be required to return their declaration of identity with their ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

## **ACTION TO BE TAKEN BEFORE THE POLL**

### **22. LIST OF ELIGIBLE VOTERS**

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
  - (a) A postal address; and,
  - (b) The member's e-mail address, if this has been provided  
  
to which their voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.



## **23. NOTICE OF POLL**

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

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

## **24. ISSUE OF VOTING INFORMATION BY RETURNING OFFICER**

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

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

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

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

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

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

for the purposes of the poll.

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

e-mail.

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

## **25. BALLOT PAPER ENVELOPE AND COVERING ENVELOPE**

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) The address for return of the ballot paper printed on it, and
  - (b) Pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer:
- (a) The completed ID declaration form if required, and
  - (b) The ballot paper envelope, with the ballot paper sealed inside it.

## **26. E-VOTING SYSTEMS**

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) Require a voter to:

- (i) Enter their voter ID number; and
  - (ii) Where the election is for a public or patient constituency, make a declaration of identity;
- in order to be able to cast their vote;
- (b) Specify:
    - (i) The name of the corporation;
    - (ii) The constituency, or class within a constituency, for which the election is being held;
    - (iii) The number of members of the council of governors to be elected from that constituency, or class within that constituency;
    - (iv) The names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
    - (v) Instructions on how to vote and how to make a declaration of identity,
    - (vi) The date and time of the close of the poll, and
    - (vii) The contact details of the returning officer;
  - (c) Prevent a voter from voting for more candidates than they are entitled to at the election;
  - (d) Create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:
    - (i) The voter's voter ID number;
    - (ii) The voter's declaration of identity (where required);
    - (iii) The candidate or candidates for whom the voter has voted; and
    - (iv) The date and time of the voter's vote;
  - (e) If the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and

(f) Prevent any voter from voting after the close of poll.

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

(a) Require a voter to

- (i) Enter their voter ID number in order to be able to cast their vote; and
- (ii) Where the election is for a public or patient constituency, make a declaration of identity;

(b) Specify:

- (i) The name of the corporation;
- (ii) The constituency, or class within a constituency, for which the election is being held;
- (iii) The number of members of the council of governors to be elected from that constituency, or class within that constituency;
- (iv) Instructions on how to vote and how to make a declaration of identity;
- (v) The date and time of the close of the poll, and
- (vi) The contact details of the returning officer;

(c) Prevent a voter from voting for more candidates than they are entitled to at the election;

(d) Create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:

- (i) The voter's voter ID number;
- (ii) The voter's declaration of identity (where required);
- (iii) The candidate or candidates for whom the voter has voted; and
- (iii) The date and time of the voter's vote

(e) If the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

- (f) Prevent any voter from voting after the close of poll.
- 26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:
- (a) Require a voter to:
    - (i) Provide their voter ID number; and
    - (ii) Where the election is for a public or patient constituency, make a declaration of identity;  
  
in order to be able to cast their vote;
  - (b) Prevent a voter from voting for more candidates than they are entitled to at the election;
  - (c) Create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
    - (i) The voter's voter ID number;
    - (ii) The voter's declaration of identity (where required);
    - (iii) The candidate or candidates for whom the voter has voted; and
    - (iii) The date and time of the voter's vote
  - (d) If the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
  - (e) Prevent any voter from voting after the close of poll.

## **THE POLL**

### **27. ELIGIBILITY TO VOTE**

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

### **28. VOTING BY PERSONS WHO REQUIRE ASSISTANCE**

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as they consider necessary to enable that voter to vote.

## **29. SPOILT BALLOT PAPERS AND SPOILT TEXT MESSAGE VOTES**

29.1 If a voter has dealt with their ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they:

(a) Are satisfied as to the voter’s identity; and

(b) Have ensured that the completed ID declaration form, if required, has not been returned.

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

(a) The name of the voter, and

(b) The details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

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

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

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

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

29.8 After issuing a replacement voter ID number in respect of a spoilt

text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):

- (a) The name of the voter, and
- (b) The details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
- (c) The details of the replacement voter ID number issued to the voter.

### **30. LOST VOTING INFORMATION**

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

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

- (a) Are satisfied as to the voter’s identity;
- (b) Have no reason to doubt that the voter did not receive the original voting information;
- (c) Have ensured that no declaration of identity, if required, has been returned.

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

- (a) The name of the voter;
- (b) The details of the unique identifier of the replacement ballot paper, if applicable, and;
- (c) The voter ID number of the voter.

### **31. ISSUE OF REPLACEMENT VOTING INFORMATION**

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, they are also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has



already been received by the returning officer in the name of that voter.

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) The name of the voter;
  - (b) The unique identifier of any replacement ballot paper issued under this rule;
  - (c) The voter ID number of the voter.

## **32. ID DECLARATION FORM FOR REPLACEMENT BALLOT PAPERS (PUBLIC AND PATIENT CONSTITUENCIES)**

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

## **POLLING BY INTERNET, TELEPHONE OR TEXT**

### **33. PROCEDURE FOR REMOTE VOTING BY INTERNET**

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

### **34. VOTING PROCEDURE FOR REMOTE VOTING BY TELEPHONE**

- 34.1 To cast their vote by telephone, the voter will need to gain access to

the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

- 34.2 When prompted to do so, the voter will need to enter their voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast their vote by keying in the numerical voting code of the candidate or candidates, for whom they wish to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once their vote at that election has been cast.

## **35. VOTING PROCEDURE FOR REMOTE VOTING BY TEXT MESSAGE**

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

## **PROCEDURE FOR RECEIPT OF ENVELOPES, INTERNET VOTES, TELEPHONE VOTES AND TEXT MESSAGE VOTES**

### **36. RECEIPT OF VOTING DOCUMENTS**

42.1 Where the returning officer receives:

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

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

- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) The candidate for whom a voter has voted, or
  - (b) The unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

### **37. VALIDITY OF VOTES**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, they are to:
- (a) Put the ID declaration form if required in a separate packet, and;
  - (b) Put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, they are to:
- (a) Mark the ballot paper “disqualified”;
  - (b) If there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper;
  - (c) Record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and;
  - (d) Place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, they are to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, they are to:
- (a) Mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”;
  - (b) Record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and;
  - (c) Place the document or documents in a separate packet.

### **38. DECLARATION OF IDENTITY BUT NO BALLOT PAPER (PUBLIC AND PATIENT CONSTITUENCY)<sup>1</sup>**

- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- (a) Mark the ID declaration form “disqualified”;
  - (b) Record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and;
  - (c) Place the ID declaration form in a separate packet.

### **39. DE-DUPLICATION OF VOTES**

- 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election they shall:
- (a) Only accept as duly returned the first vote received that was cast using the relevant voter ID number; and;
  - (b) Mark as “disqualified” all other votes that were cast using the relevant voter ID number

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

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

- (a) Mark the ballot paper “disqualified”;
- (b) If there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) Record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (c) Place the document or documents in a separate packet; and
- (e) Disregard the ballot paper when counting the votes in accordance with these rules.

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

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

#### **40. SEALING OF PACKETS**

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

- (a) The disqualified documents, together with the list of disqualified documents inside it;
- (b) The ID declaration forms, if required,
- ;
- (b) The list of spoilt ballot papers and the list of spoilt text message votes;
- (d) The list of lost ballot documents;

- (e) The list of eligible voters, and;
- (f) The list of tendered voting information

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

## **PART 6: COUNTING THE VOTES**

### **STV 41. NOT USED**

### **42. ARRANGEMENTS FOR COUNTING OF THE VOTES**

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
- (a) The board of directors and the council of governors of the corporation have approved:
    - (i) The use of such software for the purpose of counting votes in the relevant election, and
    - (ii) A policy governing the use of such software, and
  - (b) The corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

### **43. The count**

- 43.1 The returning officer is to:
- (a) Count and record the number of:
    - (iii) Ballot papers that have been returned; and;
    - (iv) The number of internet voting records, telephone voting records and/or text voting records that have been created, and;
  - (b) Count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

#### **44 (FPP). REJECTED BALLOT PAPERS AND REJECTED TEXT VOTING RECORDS**

44.1 Any ballot paper:

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

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

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

44.3 A ballot paper on which a vote is marked:

- (a) Elsewhere than in the proper place;
- (b) Otherwise than by means of a clear mark;
- (c) By more than one mark,

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

44.4 The returning officer is to:

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



44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

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

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

44.6 Any text voting record:

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

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

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

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

- (a) Otherwise than by means of a clear mark;
- (b) By more than one mark,

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

44.9 The returning officer is to:

- (a) Endorse the word “rejected” on any text voting record which under this rule is not to be counted, and;

- (b) In the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

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

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

**STV45. NOT USED.**

**STV46. NOT USED.**

**STV47. NOT USED.**

**STV48. NOT USED.**

**STV49. NOT USED.**

**STV50. NOT USED.**

**STV51. NOT USED.**

#### **51(FPP) Equality of votes**

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

## **PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

### **52(FPP). DECLARATION OF RESULT FOR CONTESTED ELECTIONS**

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

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

52.2 The returning officer is to make:

- (a) The total number of votes given for each candidate (whether elected or not), and;
- (b) The number of rejected ballot papers under each of the headings in rule 44.5,
- (c) The number of rejected text voting records under each of the headings in rule 44.10,  
  
available on request.

**STV52. NOT USED.**

### **53. DECLARATION OF RESULT FOR UNCONTESTED ELECTIONS**

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

- (a) Declare the candidate or candidates remaining validly nominated to be elected;
- (b) Give notice of the name of each candidate who they have declared elected to the chairman of the corporation, and;
- (c) Give public notice of the name of each candidate who they have declared elected.

## **PART 8: DISPOSAL OF DOCUMENTS**

### **54. SEALING UP OF DOCUMENTS RELATING TO THE POLL**

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

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

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

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

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

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

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

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

election relates.

## **55. DELIVERY OF DOCUMENTS**

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

## **56. FORWARDING OF DOCUMENTS RECEIVED AFTER CLOSE OF THE POLL**

56.1 Where:

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

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

## **57. RETENTION AND PUBLIC INSPECTION OF DOCUMENTS**

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

57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

## **58. APPLICATION FOR INSPECTION OF CERTAIN DOCUMENTS RELATING TO AN ELECTION**

58.1 The corporation may not allow:

- (a) The inspection of, or the opening of any sealed packet containing:
  - (i) Any rejected ballot papers, including ballot papers rejected in part;
  - (ii) Any rejected text voting records, including text voting records rejected in part;
  - (iii) Any disqualified documents, or the list of disqualified documents;
  - (iv) Any counted ballot papers, internet voting records, telephone voting records or text voting records, or;
  - (v) The list of eligible voters, or
- (b) Access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage, by any person without the consent of the board of directors of the corporation.

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

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

- (a) Persons;
- (b) Time;
- (c) Place and mode of inspection;
- (d) Production or opening,

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

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

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

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

- (i) That their vote was given, and
- (ii) That NHS Improvement (Monitor) has declared that the vote was invalid.



## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

### **59(FPP). COUNTERMAND OR ABANDONMENT OF POLL ON DEATH OF CANDIDATE**

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

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

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

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

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

59.5 The returning officer is to:

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

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

59.6 The returning officer is to endorse on each packet a description of:

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

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

**STV59. NOT USED.**

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### **ELECTION EXPENSES**

#### **60. ELECTION EXPENSES**

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

#### **61. EXPENSES AND PAYMENTS BY CANDIDATES**

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

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

#### **62. ELECTION EXPENSES INCURRED BY OTHER PERSONS**

62.1 No person may:

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

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

## **PUBLICITY**

### **63. PUBLICITY ABOUT ELECTION BY THE CORPORATION**

63.1 The corporation may:

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

as it considers necessary.

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

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

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

### **64. INFORMATION ABOUT CANDIDATES FOR INCLUSION WITH VOTING INFORMATION**

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

64.2 The information must consist of:

- (a) A statement submitted by the candidate of no more than 250 words;
- (b) If voting by telephone or text message is a method of polling

for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and;

- (c) A photograph of the candidate.

## **65. MEANING OF “FOR THE PURPOSES OF AN ELECTION”**

- 65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- 65.2 The provision by any individual of their own services voluntarily, on their own time, and free of charge is not to be considered an expense for the purposes of this Part.

## **PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES**

### **66. APPLICATION TO QUESTION AN ELECTION**

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

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

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

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

66.4 The application must:

- (a) Describe the alleged breach of the rules or electoral irregularity, and;
- (b) Be in such a form as the independent panel may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHS Improvement (Monitor) will refer the application to the independent election arbitration panel appointed by NHS Improvement (Monitor).

66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

66.7 NHS Improvement (Monitor) shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

## **PART 12: MISCELLANEOUS**

### **67. SECRECY**

67.1 The following persons:

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

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

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

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

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

### **68. PROHIBITION OF DISCLOSURE OF VOTE**

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

### **69. DISQUALIFICATION**

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

- (a) A member of the corporation,
- (b) An employee of the corporation,

- (c) A director of the corporation, or
- (d) Employed by or on behalf of a person who has been nominated for election.

**70. DELAY in postal service through industrial action or unforeseen event**

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

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

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as they consider appropriate.



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

(Ref. paragraphs 15, 16)

### **1. COUNCIL OF GOVERNORS: TERMS OF OFFICE**

A Governor shall be:

- 1.1. Elected or appointed for a term of three years;
- 1.2. Eligible for re-election or re-appointment at the end of that term but may not serve as a Governor for more than a total of 9 (nine) years.
- 1.3. A Governor shall cease to hold office if:
  - 1.3.1. Their term of office is terminated in accordance with paragraph 2 below and/or they are disqualified from or is otherwise ineligible to hold office as a Governor; or
  - 1.3.2. They resign by giving notice in writing to the Trust.
- 1.4. If a Governor fails to attend any meeting of the Council of Governors for a consecutive period of twelve months or alternatively for three successive meetings of the Council of Governors, their tenure of office is to be immediately terminated by the Council of Governors unless the Council of Governors is satisfied that:
  - 1.4.1. The absence was due to reasonable cause; and
  - 1.4.2. That the Governor will be able to start attending meetings of the Council of Governors within such a period as it considers reasonable.
- 1.5. The Council of Governors may by a resolution of at least three quarters of the Governors present at the meeting, terminate a Governor's tenure of office if for reasonable cause it considers that:
  - 1.5.1. They are disqualified from becoming or continuing as a Member under this Constitution;
  - 1.5.2. They have knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act; or
  - 1.5.3. Their continuing as a Governor would or would be likely to prejudice the ability of the Trust to discharge its duties and functions or adversely affect public

confidence in the services provided by the Trust or otherwise bring the Trust into disrepute.

## **2. COUNCIL OF GOVERNORS: DISQUALIFICATION AND REMOVAL**

2.1. A person may not become or continue as a Governor of the Trust if:

- 2.1.1 They are a Director of the Trust, or executive director, non-executive director, chairman, chief executive officer of another Health Service Body (unless he is appointed by a Partnership Organisation which is a Health Service Body), or a body corporate whose business involves the provision of health care services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Trust;
- 2.1.2 In the case of an Elected Governor they cease to be a Member of the constituency or part of a constituency by which they were elected;
- 2.1.3 In the case of an Appointed Governor the appointing organisation withdraws its appointment of them;
- 2.1.4 NHS Improvement (Monitor) has exercised its powers to remove that person as a Governor of the Trust or has suspended them from office or has disqualified them from holding office as a Governor of the Trust for a specified period or NHS Improvement (Monitor) has exercised any of those powers in relation to the person concerned at any other time whether in relation to the trust or some other NHS foundation trust;
- 2.1.5 They have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 2.1.6 They are a person whose tenure of office as the chairman or as a member or director of a Health Service Body has been terminated on the grounds that their appointment was not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- 2.1.7 They have had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and has not subsequently had their name included in such a list;

- 2.1.8 They have failed or refused to confirm in writing that they will abide by any Code of Conduct for Governors which the Trust shall have published from time to time;
- 2.1.9 They have refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
- 2.1.10 They are a member of a local authority Health Overview and Scrutiny Committee;
- 2.1.11 They are the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register;
- 2.1.12 They are an occupant of the same household and/or they are an Immediate Family Member of a Director of the Trust;
- 2.1.13 They are a person who by reference to information revealed by a Disclosure and Barring Service check is considered by the Trust to be inappropriate on the grounds that their appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 2.1.14 They have failed to make, or has falsely made, any declaration as required by paragraph 11.5 of this Constitution;
- 2.1.15 They have been removed as a Governor or equivalent by any foundation trust within the last five (5) years;
- 2.1.16 They are a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 2.1.17 They are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
- 2.1.18 They have failed to repay (without good cause) any amount of monies properly owed to the Trust,
- 2.1.19 They have received a written warning from the Trust for abuse of any type or;
- 2.1.20 The Partnership Organisation which they represent ceases to exist or withdraws its entitlement to appoint a Governor.
- 2.1.21 If a Governor is considered to have acted in a manner inconsistent with:

- 2.1.21.1 the core principles as set out in Appendix 1 of Annex 8; or
- 2.1.21.2 the Provider Licence; or
- 2.1.21.3 the Standing Orders for the Practice and Procedure of the Council of Governors, as set out in Annex 6 (“the Standing Orders for Governors”); or
- 2.1.21.4 the Governor's Code of Conduct, or
- 2.1.21.5 they have failed to declare an interest as required by this Constitution or the Standing Orders for Governors or, they have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or the Standing Orders Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

they are adjudged to have so acted by a majority of not less than 75% of the Council of Governors then the Governor shall vacate their office immediately.

2.1.22 The Standing Orders for Governors, Annex 6, shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.

- 2.2. The provisions of paragraph 2.1 above apply to both Elected Governors and Appointed Governors and to anyone seeking election or appointment.
- 2.3. Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 16 of the Constitution or in paragraphs 1 and 2 above of this Annex 5, they shall notify the Secretary in writing of such disqualification and/or (as the case may be), removal as soon as is practicable and, in any event, within 14 days of first becoming aware of those matters which rendered them disqualified or removed.
- 2.4. If it comes to the notice of the Secretary at the time of their taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect as soon as is practicable.
- 2.5. Upon despatch of any such notification under paragraphs 2.3 or 2.4 above, that person's tenure of office, if any, shall be terminated and they shall cease to act as a Governor, and the Secretary shall cause their name to be removed from the register of Governors of the Council of Governors.

- 2.6. The Trust will make, from time to time, policy on the grounds, processes and procedures for the removal of Governors. Such policies shall be presented to the Council of Governors for comments and approval and any changes shall be reflected in the Standing Orders.

### **3. COUNCIL OF GOVERNORS - OBJECTIVES**

- 3.1 The Trust shall seek to ensure, subject to the requirements of the 2006 Act, that the composition of the Council of Governors meets the following objectives:
- 3.1.1 The interests of the community served by the Trust are appropriately represented and the NHS and Trust principles (as set out in Annex 8) are upheld; and
  - 3.1.2 The level of representation of the Public Constituencies, the Staff Constituency, and the Partnership Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and, to this end, the Council of Governors'.
  - 3.1.3 Shall at all times maintain a policy for the composition of the Council of Governors and the Non-Executive Directors which takes account of the Trust's membership strategy.
  - 3.1.4 Shall from time to time, and not less than every three years, review the policy for the composition of the Council of Governors and the membership strategy.
  - 3.1.5 When appropriate, shall propose amendments to this Constitution.
  - 3.1.6 Shall provide to the Members relevant information concerning the performance and Forward Plans of the Trust; and
  - 3.1.7 Shall act in an advisory capacity when the Board of Directors has to make challenging or difficult decisions including those that affect the strategic direction of the Trust.

### **4. COUNCIL OF GOVERNORS: ROLES AND RESPONSIBILITIES**

- 4.1. The general responsibilities of the Council of Governors shall be:

- 4.1.1. To assist the Board of Directors in setting the strategic direction of the trust and targets for the Trust's performance;
  - 4.1.2. To monitor the Trust's performance in achieving strategic objectives and performance targets that have been set;
  - 4.1.3. To be presented with the annual accounts, any report of the Auditor on them and the annual report;
  - 4.1.4. To consider disputes as to membership referred to it pursuant to paragraph 4.1 of Annex 8; and/or
  - 4.1.5. To consider resolutions to remove a Governor pursuant to paragraph 16 of this Constitution.
  - 4.1.6. To act as guardians to ensure that the Trust operates in a way that is consistent with NHS and Trust principles (as set out in Annex 9) and the terms of the Trust's Authorisation;
  - 4.1.7. To exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.
- 4.2. Each Governor shall exercise their own skill and judgement in the conduct of the Trust's affairs and shall in their stewardship of the Trust's affairs bring as appropriate the perspective of the constituency or organisation by which they were elected or appointed as the case may be.
  - 4.3. The Council of Governors shall appoint the Chairman and other Non-Executive Directors of the Trust at a general meeting.
  - 4.4. The Council of Governors may remove the Chairman and other Non-Executive Directors of the Trust at a general meeting. The removal of the Chairman and other Non-Executive Directors of the Trust requires the approval of at least three quarters of the Governors.
  - 4.5. The Council of Governors shall approve (by a majority of the Council of Governors voting) the appointment of the Chief Executive by the Non-Executive Directors of the Trust at a general meeting.
  - 4.6. The Council of Governors will agree with the Audit Committee the criteria for appointing, reappointing and removing external Auditors and shall appoint, reappoint or remove the Trust's external Auditor, following a written recommendation from the Audit Committee. This written recommendation must include the reason(s) for the appointment, reappointment or removal of the external Auditors. Should the Council of Governors disagree with the Audit Committee's recommendation, the Council of Governors will provide the Audit Committee with the reasons for the disagreement and the

Audit Committee will be required to consider these reasons and to present any further recommendations to the Council of Governors. The recommended appointment term for the appointment or reappointment of external auditors is three to five years.

- 4.7. The Council of Governors may establish sub-committees (as set out in SO 6 in Annex 7) of its members to discharge its duties under this Constitution or in order to more effectively meet its roles and responsibilities.
- 4.8. The Governors also have the specific role and function of:
  - 4.8.1. developing membership;
  - 4.8.2. representing the interests of the Members of the Trust as a whole and the interests of the public,
  - 4.8.3. and holding the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors;
  - 4.8.4. approving an application by the Trust to enter into a merger, acquisition, separation or dissolution.

## **5. REMUNERATION**

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

## **6. VACANCIES**

- 6.1. Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the following provisions will apply.
- 6.2. Elected Governors shall be replaced using the following provisions:
  - 6.2.1. The Council of Governors shall offer the candidate who secured the next highest number of votes in the last election for the Constituency (or part of Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate does not wish to fill the vacancy it will then be offered to that candidate who secured the next highest number of votes until the vacancy is filled.

- 6.2.2. If no reserve candidate is available or willing to fill the vacancy, a by-election will be held in accordance with the Model Rules for Elections save that if an election is due to be held within 12 months of the vacancy having arisen, the office will stand vacant until the next scheduled election; and
- 6.2.3. The Returning Officer shall maintain a record of votes cast at each election for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in the paragraphs 6.2.1. and 6.2.2. of this Annex 5 above.
- 6.3. Notwithstanding the provisions above, where any termination of a Governor's term of office causes the total number of Governors elected from the Public Constituency to be less than half the total membership of the Council of Governors', a by-election will be held in accordance with paragraph 14 of this Constitution as soon as reasonably practicable.
- 6.4. Where an Appointed Governor's membership of the Council of Governors ceases for whatever reason, the Council of Governors shall invite the relevant appointing bodies to appoint a new Governor as soon as practicable. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 4 of Annex 3 of this Constitution.
- 6.5. No proceedings of a Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Governor.

## **7. COUNCIL OF GOVERNORS: DECLARATIONS**

- 7.1. A Governor elected to the Council of Governors may not vote at a meeting of the Council of Governors unless within the previous 12 months they have made a declaration referred to at paragraph 14.5 of this Constitution. The specified form regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections at **Annex 5** and shall state as follows:

"I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political membership and any financial interests I have in the NHS Trust (or, as the case may be, the Foundation Trust) at Section 4 of this form. I understand that if any of these declarations



are later found to be false I will if elected lose my seat on the Council of Governors and may also have my membership withdrawn. I endorse the principles of the National Health Service and in particular that healthcare should be available to everyone regardless of age, income or ethnicity and is based on need, not the ability to pay, as well as being free at the point of delivery".

- 7.2. The specified form of declaration referred to at paragraph 14.5 of this Constitution regarding the declaration to vote in elections for Public Governors will be as set out in Rule 21 of the Model Rules for Elections.

**ANNEX 6 - STANDING ORDERS FOR THE COUNCIL OF GOVERNORS**

*(Ref. Paragraphs 15 and 16)*

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## 1. INTRODUCTION

- 1.1. The Somerset NHS Foundation Trust (the "Trust") (previously known as the Somerset Partnership NHS Foundation Trust) became a Public Benefit Corporation on 1 May 2008 following authorisation by Monitor pursuant to the National Health Service Act 2006 (the "2006 Act").
- 1.2. The principal place of business of the Trust is currently at Musgrove Park Hospital, Taunton, Somerset, TA1 5DA
- 1.3. The Trust is governed by the 2006 Act, its Constitution and the terms of its Provider Licence granted by NHS Improvement (Monitor) (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt SOs for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.

## 2. DEFINITIONS

- 2.1. In these Standing Orders:

**Clear Day**

means a day of the week not including Saturday, Sunday or a public holiday;

**Code of Conduct**

means any code which the Trust may publish from time to time to govern or guide the conduct of the Council of Governors, Directors and Officers of the Trust;

**Appointments Panel**

means the Panel established in accordance with Annex 9; and

**Officer**

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

**Returning Officer**

means an employee of the Trust or any other person holding a paid appointment or office with the Trust who is administering and counting the e-mail votes for the issue(s) to be voted upon.

## 3. THE COUNCIL OF GOVERNORS

- 3.1. The roles and responsibilities of the Governors as set out in paragraph 4 of Annex 5 also have effect as if incorporated into the

SOs. Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in paragraphs 17, 18 and 44 and Annex 5.

## **4. MEETINGS OF THE COUNCIL OF GOVERNORS**

### **4.1. Admission of the Public**

4.1.1. The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by special resolution that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:

4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believe are special reasons for excluding the public from the meeting in accordance with the Constitution.

4.1.2. Nothing in these SOs 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 writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chairman.

### **4.2. Calling Meetings**

4.2.1. Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least 4 (four) meetings in any year including:

4.2.1.1 an annual meeting no later than the 30 September in each year, apart from the first year, when the Council of Governors are to receive and consider the Annual Accounts, any report by the Auditor and the Annual Report; and

4.2.1.2 any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

4.2.2. The Secretary may call a meeting of the Council of Governors at any time. If the Secretary refuses to call a meeting after a requisition for that purpose, signed by at least 8 (eight)

Governors and specifying the business to be transacted at the meeting, has been presented to them, or if, without so refusing, the Secretary does not call a meeting within 5 (five) Clear Days after such requisition has been presented to them at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.2.3. The Council of Governors may invite the Chief Executive, member of the Board of Directors or a representative of the financial auditor or other advisors to attend a meeting of the Council of Governors.

4.2.4. The Council of Governors may agree that its Governors can participate in its meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of SO 4.18 (Quorum).

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

4.3.1. Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on their behalf, shall be delivered to, or sent by post to the usual place of residence of every Governor, so as to be available to them at least 10 (ten) Clear Days before the meeting save in the case of emergencies.

4.3.2. Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and if possible the public part of the agenda, shall be displayed at the Trust's Headquarters and shall be advertised on the Trust's website at least 10 (ten) Clear Days before the meeting, save in the case of emergencies.

4.3.3. Want of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than five Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.

4.3.4. In the case of a meeting called by Governors in default of the Secretary, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.

- 4.3.5. Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than 3 (three) Clear Days before the meeting, save in the case of emergencies. It is the responsibility of the Chairman to ensure that sufficient information is provided to Governors to ensure that rational discussion can take place.
- 4.3.6. In the event of an emergency giving rise to the need for an immediate meeting failure to comply with the notice periods referred to in SO 4.3 shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact Governors of the Council of Governors who are not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

#### **4.4. Annual Meeting**

- 4.4.1. The Council of Governors shall hold an annual meeting of the Council of Governors in every calendar year so that there is no more than fifteen calendar months between one meeting and the next and shall present to that meeting:
- 4.4.1.1 a report on the proceedings of its meetings held since the last annual meeting;
- 4.4.1.2 a report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be Members under the Constitution;
- 4.4.1.3 a report on any change to the Governors which has taken place since the last annual meeting; and
- 4.4.1.4 a report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.

#### **4.5. Setting the Agenda**

- 4.5.1. The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.5.2. A Governor of the Council of Governors desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make their request in writing to the Chairman at least 10 (ten) 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 10 (ten) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

#### **4.6. Petitions**

4.6.1. Where a petition has been received by the Trust, the Chairman shall include the petition as an item for the agenda of the next meeting of the Council of Governors.

#### **4.7. Written Motions**

4.7.1. In urgent situations and with the consent of the Chairman, business may be effected by a Governor's written motion to deal with business otherwise required to be conducted at a meeting of the Council of Governors.

4.7.2. If all Governors of the Council of Governors have been notified of the proposal and a simple majority of Governors entitled to attend and vote at a meeting of the Council of Governors confirms acceptance of the written motion either in writing or electronically to the Secretary within 5 (five) Clear Days of dispatch then the motion will be deemed to have been resolved, notwithstanding that the Governors have not gathered in one place.

4.7.3. The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date, a Governor who has previously indicated acceptance can withdraw, and the motion shall fail.

4.7.4. Once the resolution has been passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.

#### **4.8. Chairman of Meeting**

4.8.1. At any meeting of the Council of Governors, the Chairman, if present, shall preside.

4.8.2. If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Deputy Chairman shall preside.

4.8.3. If the Deputy Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of

interest, another Non-Executive Director as shall be appointed by the Council of Governors shall preside.

4.8.4. Where it has been determined by the Chair that it is inappropriate for the Chairman or any non-executive director to chair the meeting, the Lead Governor shall preside.

#### 4.9. **Agenda**

4.9.1. Where a Governor has requested inclusion of a matter on the agenda in accordance with SO 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this SO 4.9 shall apply in respect of the proposition:

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

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

4.9.3.1. an amendment to the proposition;

4.9.3.2. the adjournment of the discussion or the meeting;

4.9.3.3. that the meeting proceed to the next item of business;

4.9.3.4. the appointment of an ad hoc committee to deal with a specific item of business;

4.9.3.5. that the motion be now put;

4.9.3.6. that the public be excluded from the meeting in relation to the discussion concerning the proposition under SO 4.1.1.

4.9.4. In the case of SOs 4.9.3.3 and 4.9.3.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.

4.9.5. No amendment to the proposition shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the proposition.

4.9.6. The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.



#### **4.10. Report from the Board of Directors**

4.10.1. Unless otherwise agreed in writing, at each meeting of the Council of Governors, the Board of Directors is required to report to the Council of Governors on the Trust's general progress forward and forward planning unless it is agreed in writing they will not do so.

#### **4.11. Chairman's Ruling**

4.11.1. 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 Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

#### **4.12. Voting**

4.12.1. A Governor may not vote at a meeting of the Council of Governors unless, within 7 (seven) Clear Days prior to the commencement of the meeting they have:

4.12.1.1. made a declaration that they are a member of the constituency which elected them; and

4.12.1.2. if the Governor is an Appointed Governor, they are not prevented from being a governor of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.

4.12.2. Subject to SO 4.12.4 below, every question at a meeting shall be determined by a majority of the votes of the Chairman of the meeting and the Governors present and voting on the question.

4.12.3. Whoever is Chairman of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a second or casting vote.

4.12.4. A resolution for the removal of the Chairman or a Non-Executive Director shall be passed only if three quarters of the total number of Governors vote in favour of it.

4.12.5. If at least one-third of the Governors present so request, the voting (other than by paper ballot or e-mail vote) on any question may be recorded to show how each Governor present voted or abstained.

- 4.12.6. If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot or e-mail vote).
- 4.12.7. Subject to SO 4.19 and SO 4.20, a Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link and so is therefore entitled to vote. For the avoidance of doubt, SO 4.12.8 does not apply if an e-mail vote is required under SO 4.19 and SO 4.20.
- 4.12.8. In certain circumstances, the Chairman may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three quarters of the Governors, and a majority of the elected Governors, approve the resolution in writing within the timescale imposed in such a notice.

**4.13. Special Provisions relating to Termination of Governors' Tenure:**

- 4.13.1. Where a person has been elected or appointed to be a Governor and they become disqualified from office under paragraph 16 and Annex 6, they shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 (fourteen) days of the first becoming aware of those matters which render them disqualified. The Secretary shall forthwith remove them from the register of the Governors.
- 4.13.2. If it comes to the notice of the Secretary that the Governor is disqualified pursuant to SO 4.13.1, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give them notice in writing to that effect as soon as practicable and in any event within 14 (fourteen) days of the date of the said declaration. In the event that the Governor shall dispute that they are disqualified the Governor may refer the matter to the dispute resolution procedure set out in Annex 8 within 28 (twenty eight) days of the date upon which the notice was given to the Governor.
- 4.13.3. The Chairman shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned so that any allegation made against a Governor on the following grounds can be investigated;

- 4.13.3.1. non-compliance with the Regulatory Framework, Code of Conduct, SOs and Standing Financial Instructions; or
- 4.13.3.2. committal of a serious breach of the Code of Conduct; or
- 4.13.3.3. misconduct detrimental to the Trust; or
- 4.13.3.4. a failure to attend three consecutive meetings of the Council of Governors unless the Council of Governors is satisfied by a three quarters majority that:
  - 4.13.3.4.1. the absence was due to reasonable cause; and
  - 4.13.3.4.2. the Governor concerned will be able to start attending meetings of the Council of Governors again within such period as they consider reasonable; or
- 4.13.4. Where any grounds within SO 4.13.3 are alleged, it shall be open to the Council of Governors to decide, by two thirds majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 4.13.5. The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is considered to be detrimental to the Trust, and inviting and considering their response within a defined appropriate and reasonable timescale.
- 4.13.6. The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.13.7. The Governors, by three quarters majority of those present and voting can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.
- 4.13.8. The Governors can impose such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, to non-payment of expenses and removal of the Governor from office.
- 4.13.9. Upon disqualification, removal or termination of a Governor's office under this SO, the Secretary shall cause

their name to be removed immediately from the Register of Governors.

- 4.13.10. Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the Dispute Resolution Procedure under Annex 8 within 28 (twenty eight) days of the date upon which notice in writing of the Council of Governors decision made in accordance with SO 4.13.7 is communicated to the Governor concerned.
- 4.13.11. A Governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which they shall cease to hold office.
- 4.13.12. A Governor who resigns under SO 4.13.11 above or whose office is terminated under this SO or Annex 6 shall not be eligible to stand for re-election to the Council of Governors for a period of three years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of whichever is later.
- 4.13.13. In the event that an elected Governor's seat falls vacant before the end of the term of office, the provisions as set out at Annex 5 shall apply.

#### **4.14. Minutes**

- 4.14.1. The minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chairman presiding at it.
- 4.14.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

#### **4.15. Suspension of Standing Orders**

- 4.15.1. Except where this would contravene any statutory provision or any guidance or best practice advice issued by NHS Improvement (Monitor), any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the Public Constituency of the Trust, and that a majority of those present vote in favour of suspension.

- 4.15.2. a decision to suspend the SOs shall be recorded in the minutes of the meeting.
- 4.15.3. a separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Chairman and Governors.
- 4.15.4. no formal business may be transacted while the SOs are suspended.

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

- 4.16.1. Subject always to paragraph 46 of the Constitution, these SOs shall be amended only if:
  - 4.16.1.1. a notice of proposal under SO 4.5.2 has been given; and
  - 4.16.1.2. no fewer than half the total number of Governors vote in favour of amendment; and
  - 4.16.1.3. no fewer than half of the total number of Governors is present; and
  - 4.16.1.4. the variation proposed has been approved by the Council of Governors and does not contravene a statutory provision or guidance issued by NHS Improvement (Monitor) or the Constitution.

#### **4.17. Record of Attendance**

- 4.17.1. The names of the Chairman and Governors present at the meeting shall be recorded in the minutes.

#### **4.18. Quorum**

- 4.18.1. No business shall be transacted at a meeting unless at least half of the Governors are present, and of these not less than half shall be Governors elected from the Public or appointed by non Health Service Bodies.
- 4.18.2. If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a minimum period of 5 (five) Clear Days and upon reconvening, those present shall constitute a quorum.
- 4.18.3. If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in SO 7, they shall no longer count

towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.19. At all times all questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined in the first instance by oral expression or by a show of hands, unless the Chairman uses their discretion under SO 4.19 to hold an e-mail vote. At all times, no Governor may vote by proxy.

4.19.1. Chairman's discretion to hold an e-mail vote may be exercised at any time, and for any reason in consultation with the Lead Governor.

4.19.2. If the Chairman exercises their discretion to hold an e-mail vote, then the Governors must vote by e-mail by sending their e-mail vote back to the Returning Officer by the Deadline Date (as prescribed under SO 4.20 and as agreed with the Lead Governor). For the avoidance of doubt, if the Chairman exercises their discretion to hold an e-mail vote, this e-mail vote will form the only method of voting.

4.19.3. individual Governor may only cast one vote on the Proposed Transaction unless a second further vote is required owing to any previous vote not being passed in accordance with SO 4.12.2. Once an e-mail vote has been cast by a Governor in accordance with SO 4.19 and SO 4.20, the vote cannot be revoked or altered in any way.

#### 4.20. Protocol for Voting by e-mail

4.20.1. The Returning Officer is to e-mail a notice of the e-mail vote stating:

- (a) The details of the issue(s) to be voted upon;
- (b) The date and time at which the e-mail votes are required to be sent out to the Governors;
- (c) The e-mail address for return of e-mail votes including the date and time by which they must be received by the Returning Officer ("**Deadline Date**"); and
- (d) The contact details of the Returning Officer.

4.20.2. As soon as is reasonably practicable on or after the e-mail of the notice of the e-mail vote, the Returning Officer is to e-mail to the valid e-mail address of every Governor, the following information:

- a) a ballot paper attachment in accessible electronic format with clear instructions as to how to cast their vote by e-mail;
- b) a Declaration of Eligibility form (if required). This form may be combined with the ballot paper;
- c) information about the issue(s) to be voted upon; and
- d) a covering e-mail providing:
  - i. the e-mail address for return of the ballot paper;
  - ii. clear instructions instructing the voter as to how to return their e-mail vote to the Returning Officer by the Deadline Date;
 (“e-mail voting information”)

## **5. LEAD GOVERNOR**

- 5.1. The Governors may (at their discretion) appoint a Lead Governor at any general meeting of the Council of Governors thereafter. The method of appointment shall be determined by agreement of the Council of Governors.
- 5.2. If the Governors make the appointments specified in Standing Order 5.1 above, then the following provisions of this Standing Order shall apply:
- 5.3 Without prejudice to the rights of any Governor to communicate directly with the Chairman, the Lead Governor shall be responsible for receiving from Governors observations and concerns expressed to them by Governors regarding a potential significant breach of the Trust’s Licence.
- 5.4 Subject to Standing Order 5.8, the Lead Governor so appointed shall hold office for a period of 12 calendar months but shall be eligible for reappointment at that time.
- 5.6 The contact details of the Lead Governor shall be provided to NHS Improvement (Monitor) on appointment. The Lead Governor shall then be responsible for receiving and communicating to the Council of Governors any correspondence from NHS Improvement (Monitor)
- 5.7 The Lead Governor shall chair the meeting of the Council of Governors when it is inappropriate for the Chair or a non-executive Director to do so.

- 5.8 Notwithstanding the tenure provisions set out at Standing Order 5.5 above, if either the Lead Governor is considered to have acted in a manner inconsistent with Standing Orders 5.3 and they are adjudged to have so acted by a majority of not less than 75% of the Council of Governors, then the Lead Governor shall stand down and cease to fulfil the role of Lead Governor.

## **6. COMMITTEES**

- 6.1. Subject to any guidance as may be issued by NHS Improvement (Monitor), the Council of Governors may and, if directed by NHS Improvement (Monitor), shall appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Regulatory Framework, consisting wholly or partly of the Chairman and Governors.
- 6.2. All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a committee shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.
- 6.3. A committee appointed under SO 6 may, subject to such directions as may be given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee.
- 6.4. These SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chairman" to be read as a reference to the Chairman of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits.
- 6.5. Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance or best practice advice issued by NHS Improvement (Monitor), but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting.
- 6.6. Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council of Governors.
- 6.7. Any committee or sub-committee established under this SO 6 may call upon outside advisers to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under



this paragraph shall be determined in accordance with the Dispute Resolution Procedure as set out at Annex 8.

- 6.8. The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 6.9. Where the Council of Governors is required to appoint persons to a committee 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 applicable statute and regulations and with guidance issued by NHS Improvement (Monitor).
- 6.10. Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors or NHS Improvement (Monitor).
- 6.11. The Council of Governors may appoint Governors to serve on joint committees with the Board of Directors or committees of the Board of Directors.

## **7. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

### **7.1. Declaration of Interests**

7.1.1. The Regulatory Framework requires each Governor to declare to the Secretary:

7.1.1.1. any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in SO 7.2.1; and

7.1.1.2. any actual or potential pecuniary interest, direct or indirect, in any matter concerning the Trust, as described in SOs 7.2.2 and 7.2.3; and

7.1.1.3. any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 7.2.5.

7.1.2. Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, and in a form prescribed by the Secretary which shall be included as Schedule A to these SOs.

- 7.1.3. In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 7.1.4. Subject to SO 7.2.4, if a Governor has declared a pecuniary interest (as described in SOs 7.2.2 and 7.2.3) they shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Council of Governors meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 7.1.5. This SO 7 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not they are also a Governor).
- 7.1.6. The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

## **7.2. Nature of Interests**

- 7.2.1. Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:
- 7.2.1.1. directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);  
or
  - 7.2.1.2. ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
  - 7.2.1.3. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
  - 7.2.1.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or

- 7.2.1.5. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
  - 7.2.1.6. any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 7.2.2. A Governor shall be treated as having indirectly a pecuniary interest in a matter, if:
- 7.2.2.1. They, or a nominee of them, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - 7.2.2.2. They are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 7.2.3. A Governor shall not be treated as having a pecuniary interest in any matter by reason only:
- 7.2.3.1. of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
  - 7.2.3.2. of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
  - 7.2.3.3. of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 7.2.4. Where a Governor:
- 7.2.4.1. has an indirect pecuniary interest in a matter by reason only of a beneficial interest in securities of a company or other body, and
  - 7.2.4.2. the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal

value of the issued share capital of the company or body, whichever is the less, and

7.2.4.3. if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest.

7.2.5. A family interest is an interest of an Immediate Family Member of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of them.

7.2.6. If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. 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.

### **7.3. Register of Governors**

7.3.1. The register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted which may be the Secretary.

### **7.4. Register of Governors' Interests**

7.4.1. The Secretary shall keep a register of interests of Governors which shall contain the names of each Governor, whether he has declared any interest, and if so, the interest declared.

## **8. STANDARDS OF BUSINESS CONDUCT**

8.1. Governors of the Council of Governors shall comply with the NHS Foundation Trust Code of Governance, the Council of Governors' Code of Conduct and any guidance or best practice advice issued by NHS Improvement (Monitor).

## **9. APPOINTMENTS AND RECOMMENDATIONS**

- 9.1. A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this SO shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 9.2. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.
- 9.3. Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any Governor or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 9.4. The Chairman and every Governor shall disclose to the Chief Executive or their delegated officer any relationship between themselves and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or their delegated Officer to report to the Council of Governors any such disclosure made.
- 9.5. On appointment, Governors of the Council of Governors should disclose to the Council of Governors whether they are related to any other Governor of the Council of Governors or holder of any office in the Trust.
- 9.6. Where the relationship to a Governor of the Council of Governors of the Trust is disclosed, SO 7 shall apply.

## **10. MISCELLANEOUS**

- 10.1. The Secretary shall provide a copy of these SOs to each Governor and endeavour to ensure that each Governor understands their responsibilities within these SOs.
- 10.2. These SOs including all documents having effect as if incorporated in them shall be reviewed annually by the Board of Directors and the Council of Governors.
- 10.3. If for any reason these SOs 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 Governors have a duty to disclose any non-compliance with these SOs to the Chairman as soon as possible.

Schedule A

**Prescribed Form of Declaration of Interests**

Declaration to the Secretary of Somerset NHS Foundation Trust

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Date [insert]

To the Secretary of Somerset NHS Foundation Trust

Dear [insert]

In fulfilment of the obligations imposed on me by paragraph 16 of the Constitution of the Somerset NHS Foundation Trust and the provisions of Standing Order 7 of the Standing Orders for the Council of Governors generally, and in particular Standing Order 7.1.2, I hereby give notice to the Trust of my interest in [insert details of the nature and extent of the relevant interest(s) (e.g. pecuniary, non pecuniary, direct, indirect, actual, potential, etc.)] as of the date posted above.

I require the nature and extent of my interest(s) to be recorded in the Trust's register of interests of the Governors of the Council of Governors.

Yours faithfully

[name]

**ANNEX 7 - BOARD OF DIRECTORS STANDING ORDERS**  
*(Ref. Paragraph 32)*

**CONTENTS:**

1. INTRODUCTION
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7. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS
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## **1. INTRODUCTION**

### **Statutory Framework**

- 1.1 The Somerset NHS Foundation Trust (the "Trust") (previously known as the Somerset Partnership NHS Foundation Trust) became a Public Benefit Corporation on 1 May 2008 following approval by Monitor pursuant to the 2006 Act.
- 10.4. The principal place of business of the Trust is at the Trust Headquarters, Musgrove Park Hospital, Taunton, Somerset, TA1 5DA.
- 1.2 The Trust is governed by the 2006 Act, the Constitution and the Provider Licence granted by Monitor (the "Regulatory Framework"). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework and in particular paragraph 30 of the Constitution requires the Board Directors of the Trust to adopt SOs for the regulation of its proceedings and business.
- 1.3 As a Public Benefit Corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.4 The SOs, Scheme of Delegation and SFIs provide a comprehensive business framework. All Executive Directors and Non-Executive Directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.
- 1.5 The Trust shall deal with NHS Improvement (Monitor) in an open and co-operative manner and shall promptly notify NHS Improvement (Monitor) of anything relating to the Trust of which NHS Improvement (Monitor) would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under its Provider Licence or any financial or performance thresholds which NHS Improvement (Monitor) may specify from time to time.
- 1.6 The Chairman, Chief Executive or any other person giving information to the public on behalf of the Trust shall ensure that they follow the principles set out by the Committee on Standards in Public Life (the Wicks Committee) and that they will adhere to the principles set out within the Independent Commission's Good Governance Standard for Public Service, and the Care Quality Commission's Fit and Proper Person regulations. They will also ensure that they follow the best practice advice set out in the NHS Foundation Trust Code of



Governance 2006 (the "Code") published by Monitor that sets out the overarching framework for compliance with the Regulatory Framework.

### **Delegation of Powers – Scheme of Delegation**

- 1.7 Under the SOs relating to the Arrangements for the Exercise of Functions by Delegation (SO 5) the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 6 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated Powers are covered in a separate document (the Scheme of Delegation). That document has effect as if incorporated into the SOs.

## **2. INTERPRETATION**

- 2.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of SOs (on which they should be advised by the Chief Executive and Secretary).
- 2.2 Any expression to which a meaning is given in the 2006 Act or any regulations or orders made under the 2006 Act shall have the same meaning in these SOs and, in addition, defined terms used in these SOs have the same meaning as in the Constitution unless the context requires otherwise, or a contrary intention is evident.
- 2.3 Words importing the singular shall include the plural and vice-versa.
- 2.4 In these SOs:

#### **“Accounting Officer”**

means the Officer responsible for discharging the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act. For this Trust it shall be the Chief Executive.

#### **“Board of Directors”**

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

#### **"Budget"**

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

**“Chairman”**

means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression “the Chairman” shall be deemed to include the Deputy Chairman or any other non-executive appointed in accordance with paragraph 26 of the Constitution if the Chairman is absent from the meeting or is otherwise unavailable.

**“Chief Executive”**

means the Chief Executive officer of the Trust.

**“Clear Days”**

means a day of the week not including a Saturday, Sunday or Public Holiday.

**“Concode”**

means a code of procedure for building and engineering contracts for the NHS.

**“Constitution”**

means the Constitution of the Trust, together with the Annexes and Appendices attached hereto as approved by NHS Improvement (Monitor).

**“Council of Governors”**

means the Council of Governors as constituted in this Constitution, which has the same meaning as the “Council of Governors” in the 2006 Act.

**“Director”**

means a member of the Board of Directors appointed in accordance with the Constitution, and includes both executive and non-executive Directors and the phrase “member of the Board” shall be construed accordingly.

**“Finance Director”**

means the Director of Finance of the Trust.

**“Funds held on Trust”**

means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Section 14 of Part 2, Schedule 4 to the 2006 Act. Such funds may or may not be charitable.

**“Member”**

means a member of the Trust.

**"Motion"**

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

**"NHS Improvement"**

means the body corporate known as NHS Improvement (Monitor), the successor body of Monitor, as provided by Section 61 of the 2012 Act.

**"Nominated Officer"**

means an Officer charged with the responsibility for discharging specific tasks within the SOs and the SFIs.

**"Officer"**

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

**"Scheme of Delegation"**

means the Reservation of Powers to the Board of Directors and Delegation of Powers.

**"Secretary to the Trust"**

means a person appointed by the Trust to act independently of the Board of Directors to provide advice on corporate governance issues to the Board of Directors and the Chairman and to monitor the Trust's compliance with the Regulatory Framework, the Standing Orders, and regulatory guidance.

**"SFIs"**

means Standing Financial Instructions.

**"SOs"**

means these Standing Orders.

**"the 2006 Act"**

means the National Health Service Act 2006.

**"Trust"**

means the Somerset NHS Foundation Trust.

**"Trust Headquarters"**

means Musgrove Park Hospital, Taunton, Somerset, TA1 5DA

**"Vice Chairman"**

means a non-executive Director appointed by the Council of Governors to undertake the Chairman's duties in the event that the Chairman is absent for any reason.

### **3. THE TRUST BOARD**

- 3.1 All business shall be conducted in the name of the Trust.
- 3.2 All funds received in trust shall be in the name of the Trust as corporate trustee.
- 3.3 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 the Trust.
- 3.4 The Trust has the functions conferred on it by its Provider Licence issued by NHS Improvement (Monitor). Directors acting on behalf of the Trust as corporate trustees 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 only to NHS Improvement (Monitor).
- 3.5 The powers of the Trust established under statute shall be exercised by the Board of Directors meeting in public/ private session except as otherwise provided for in SO 4.
- 3.6 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Scheme of Delegation and have effect as if incorporated into the SOs.
- 3.7 **Composition of the Board of Directors**
- 3.7.1 In accordance with the Constitution, the Board of Directors is to comprise:
- 3.7.1.1 The following Non-Executive Directors:
- 3.7.1.1.1 the Chairman, and up to a maximum of 8 (eight) other Non-Executive Directors.
- 3.7.1.2 the following Executive Directors:
- 3.7.1.2.1 the Chief Executive who shall be the Accounting Officer, the Finance Director, and up to a maximum of 6 (six) other Directors as set out in paragraph 23 of the Constitution.
- 3.7.2 At meetings of the Board of Directors, in the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman

(and in their absence, the Deputy Chairman) shall have a second or casting vote.

3.7.3 A person may only be appointed as a Non-Executive Director if:

3.7.3.1 They are a member of the Public Constituency , and

3.7.3.2 They are not eligible by virtue of paragraph 25 of the Constitution or disqualified by virtue of paragraphs 29 and 30.

3.7.4 The validity of any act of the Board of Directors is not affected by any vacancy among the Directors or any defect in the appointment of a Director.

3.7.5 The Chairman (in consultation with the Council of Governors) will appoint a Non-Executive Director as the "senior independent director", for such period not exceeding the remainder of their term as a Non-Executive Director as they may specify on appointing them.

3.7.6 Any Non-Executive Director so appointed may at any time resign from the office of "senior independent director" by giving notice in writing to the Chairman. The Chairman (in consultation with the Council of Governors) will thereupon appoint another Non-Executive Director as "senior independent director" in accordance with the provisions in SO 3.7.5.

3.7.7 The "senior independent director" shall perform the role set out in the Code of Governance.

### **3.8 Register of Directors**

3.8.1 In accordance with paragraphs 35 and 36 of the Constitution, the Trust shall keep and maintain a register of Directors which shall list the names of the Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.

### **3.9 Appointment and Removal of the Chairman and other Non-Executive Directors**

3.9.1 The Chairman and other Non-Executive Directors are to be appointed by the Council of Governors following a formal, rigorous and transparent procedure. The current Chairman or a Non-Executive Director may stand for reappointment. Six months before the end of the term of office of the Chairman or a Non-Executive Director (as the case may be), the Council of

Governors will adopt a procedure as set out in Annex 8 for appointing the Chairman and the Non-Executive Directors.

3.9.2 The provisions of paragraph 26 of the Constitution apply to the removal of the Chairman or other Non-Executive Directors.

### **3.10 Remuneration and Terms Of Office of the Chairman and Non-Executive Directors**

3.10.1 The Chairman and the Non-Executive Directors are to be appointed for a period of office determined by the Council of Governors at a general meeting of the Council of Governors.

3.10.2 At the general meeting of the Council of Governors referred to at SO 3.10.1 the Council of Governors shall decide the:

3.10.2.1 period of office;

3.10.2.2 remuneration and allowances; and

3.10.2.3 other terms and conditions of office, including the job description, of the Chairman and other Non-Executive Directors.

### **3.11 Appointment and Powers of Deputy Chairman**

3.11.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman and in accordance with paragraph 27 of the Constitution, the Council of Governors shall appoint a Non-Executive Director to be Deputy Chairman for such period, not exceeding the remainder of their term as Non-Executive Director, as the Council of Governors may specify on appointing them.

3.11.2 Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy Chairman in accordance with the provisions of SO 3.11.1.

3.11.3 Where the Chairman of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairman owing to illness or any other cause, the Deputy Chairman will be "acting chairman" until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these SOs shall, so long as there is no Chairman able to perform their duties, be taken to include references to the Deputy Chairman. Where both the Chairman and Deputy Chairman are unable to perform their duties owing to illness, conflict of interest or any other cause, another Non-Executive Director as

may be appointed by the Council of Governors shall act as Chairman.

### **3.12 Remuneration and Terms of Office of the Chief Executive and Executive Directors**

3.12.1 The Trust shall establish a committee of Non-Executive Directors in accordance with SO 6 to decide the:

3.12.1.1 remuneration and allowances; and

3.12.1.2 the other terms and conditions of office of the Chief Executive and other Executive Directors.

### **3.13 Disqualification**

3.13.1 Directors are subject to the disqualification criteria included at paragraphs 29 and 30 of the Constitution.

## **4. MEETINGS OF THE TRUST**

### **4.1 Admission of the Public and the Press**

4.1.1 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, to be determined by the Board of Directors.

4.1.2 Before holding a public meeting, the Board of Directors will send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding the meeting, the Board of Directors will send a copy of the minutes of the meeting to the Council of Governors. Want of service of the agenda and minutes of the Board meeting on any Governor shall not affect the validity of a meeting.

4.1.3 The public and representatives of the press shall be afforded facilities to attend public meetings of the Board of Directors but shall be required to withdraw 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 of which would be prejudicial to the public interest”.*

4.1.4 The Chairman shall give such directions as they thinks fit in regard to the arrangements for meetings and accommodation

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

*“that in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public.*

- 4.1.5 Nothing in these SOs shall require the Board of Directors to allow members of the public or representative 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.

## 4.2 **Calling Meetings**

- 4.2.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 4.2.2 The Chairman may call a meeting of the Board of Directors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of the Directors, and this has been presented to them, or if, without so refusing, the Chairman does not call a meeting within 7 (seven) days after such requisition has been presented to them, such one third or more members of the Board of Directors may forthwith call a meeting.

## 4.3 **Notice of Meetings**

- 4.3.1 Before each meeting of the Trust, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an Officer of the Trust authorised by the Chairman to sign on their behalf, shall be delivered to every Director, or sent by post and where possible by email to the usual place of residence of every Director, so as to be available to them at least 6 (six) Clear Days before the meeting.
- 4.3.2 Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting.
- 4.3.3 In the case of a meeting called by the Directors in default of the Chairman, the notice shall be signed by those Directors



and no business shall be transacted at the meeting other than that specified in the notice.

- 4.3.4 Failure to serve such a notice on more than 3 (three) Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 4.3.5 In the event of an emergency giving rise to the need for an immediate meeting, SOs 4.3.1 to 4.3.4 shall not prevent the calling of such a meeting without the requisite 6 (six) Clear Days notice provided that every 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.

#### **4.4 Agendas**

- 4.4.1 Agendas will be dispatched by post and by email to members of the Board of Directors 6 (six) Clear Days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than 3 (three) Clear Days before the meeting, save in emergency. Failure to serve such a notice on more than three members of the Board of Directors will invalidate the meeting. A notice shall be presumed to have been served one day after dispatch.
- 4.4.2 Before each meeting of the Board of Directors (where SO 4.1.2 applies), 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 Headquarters at least 3 (three) Clear Days before the meeting.

#### **4.5 Setting the Agenda**

- 4.5.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted.
- 4.5.2 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chairman at least 10 (ten) Clear Days before the meeting, subject to SO 4.3. Requests made less than 10 (ten) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman. Agendas will be sent to Directors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than 3 (three) Clear Days before the meeting, save in the case of

emergencies. 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.

#### **4.6 Petitions**

4.6.1 Where a petition has been received by the Trust, the Chairman shall include the petition as an item for the agenda of the next meeting of the Board of Directors.

#### **4.7 Chairman of Meeting**

4.7.1 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and they are present, shall preside. If the Chairman and Deputy Chairman are absent such Non-Executive Director as the members of the Board of Directors present shall choose, shall preside.

4.7.2 If the Chairman is absent temporarily on the grounds of a declared conflict of interest, the Deputy-Chairman, if present, shall preside. If the Chairman and Deputy-Chairman are absent, or are disqualified from participating, such Non-Executive Director as the members of the Board of Directors present shall choose shall preside.

#### **4.8 Chairman's Ruling**

4.8.1 Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time, and subject to SO 2.1 the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

#### **4.9 Notices of Motion**

4.9.1 Subject to the provisions of SO 4.11 ('Motions: procedure at and during a meeting') and SO 4.12 ('Motion to rescind a resolution'), a member of the Board of Directors wishing to move or amend a motion shall send a written notice to the Chairman.

4.9.2 The notice shall be delivered at least 10 (ten) Clear Days before the meeting. The Chairman shall include in the agenda for the meeting all notices so received that are in order and permissible under these SOs. Subject to SO 4.3.3, this SO shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

## 4.10 Emergency Motions and Written Motions

### 4.10.1 Emergency Motions

4.10.1.1 Subject to the agreement of the Chairman, and subject also to the provision of SO 4.11 ('Motions: **procedure** at and during a meeting'), 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 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 Chairman's decision to include the item shall be final.

### 4.10.2 Written Motions

4.10.2.1 In urgent situations and with the consent of the Chairman, business may be effected by a Director's written motion to deal with business otherwise required to be conducted at a meeting of the Board of Directors.

4.10.2.2 If all members of the Board of Directors have been notified of the proposal and a simple majority of Directors entitled to attend and vote at a meeting of the Board of Directors confirms acceptance of the written motion either in writing or electronically to the Secretary within 5 (five) Clear Days of dispatch then the motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.

4.10.2.3 The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date a Director who has previously indicated acceptance can withdraw and the motion shall fail.

4.10.2.4 Once the resolution is passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting where it shall be signed by the person presiding at it.

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

### **4.11.1 Who may propose**

- 4.11.1.1 A motion may be proposed by the Chairman of the meeting or any member of the Board of Directors present. It must also be seconded by another member of the Board of Directors.

### **4.11.2 Contents of motions**

- 4.11.2.1 The Chairman 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:

- 4.11.2.1.1. the reception of a report;
- 4.11.2.1.2. consideration of any item of business before the Board of Directors;
- 4.11.2.1.3. the accuracy of minutes;
- 4.11.2.1.4. that the Board of Directors proceed to next business;
- 4.11.2.1.5. that the Board of Directors adjourn;
- 4.11.2.1.6. that the question be now put.

### **4.11.3 Amendments to motions**

- 4.11.3.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.
- 4.11.3.2 Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board of Directors.
- 4.11.3.3 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.

#### **4.11.4 Rights of reply to motions**

##### **4.11.4.1 Amendments**

- 4.11.4.1.1. 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.

##### **4.11.4.2 Substantive/original motion**

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

#### **4.11.5 Withdrawing a motion**

- 4.11.5.1 A motion or an amendment to a motion, once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

#### **4.11.6 Motions once under debate**

- 4.11.6.1 When a motion is under debate, no motion may be moved other than:

- 4.11.6.1.1. an amendment to the motion;
- 4.11.6.1.2. the adjournment of the discussion, or the meeting;
- 4.11.6.1.3. that the meeting proceed to the next business;
- 4.11.6.1.4. that the question should be now put;
- 4.11.6.1.5. the appointment of an 'ad hoc' committee to deal with a specific item of business;
- 4.11.6.1.6. a motion under SO 4.1.3 resolving to exclude the public (including the press); and

4.11.6.1.7. that a member be not further heard.

4.11.6.2 In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board of Directors who has not taken part in the debate and who is eligible to vote.

4.11.6.3 If a motion to proceed to the next business or that the question be now put, is carried, the Chairman should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

4.11.6.4 The mover of a motion shall have a maximum of 5 (five) minutes to move and 5 (five) minutes to reply. Once a motion has been moved, no member of the Board of Directors shall speak more than once or for more than 5 (five) minutes.

#### 4.12 Motion to Rescind a Resolution

4.12.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 (six) calendar months shall bear the **signature** of the member of the Board of Directors who gives it and also the signature of 4 (four) other members of the Board of Directors, and 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.

4.12.2 When any such motion has been dealt with by the Board of Directors, it shall not be competent for any member of the Board of Directors other than the Chairman to propose a motion to the same effect within 6 (six) months however the Chairman may do so if he considers it appropriate. This SO shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

#### 4.13 Voting

4.13.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the chairman of the meeting

shall have a second or casting vote. For any avoidance of doubt, for voting, there must not be more Executive Directors voting than Non-Executive Directors.

4.13.2 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

4.13.3 If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.

4.13.4 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).

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

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

#### **4.14 Minutes**

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

4.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. Minutes shall be retained in the Chief Executive's office.

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

#### **4.15 Suspension of Standing Orders**

4.15.1 Except where this would contravene any statutory provision or any guidance or best practice advice issued by NHS Improvement (Monitor), any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

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

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

4.15.4 No formal business may be transacted while the SOs are suspended.

4.15.5 The Audit Committee shall review every decision to suspend the SOs.

#### **4.16 Variation and Amendment of Standing Orders**

4.16.1 Subject always to paragraph 31 of the Constitution, these SOs shall be amended only if:

4.16.1.1 relevant notice of a meeting has been served in accordance with SO 4.3;

4.16.1.2 a notice of motion under SO 4.9 has been given;

4.16.1.3 no fewer than half the total of the Non-Executive Directors vote in favour of amendment;

4.16.1.4 at least two-thirds of the Directors are present; and

4.16.1.5 the variation proposed does not contravene the Regulatory Framework, any statutory provisions or any guidance issued by Monitor.

#### **4.17 Record of Attendance**

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



#### **4.18 Quorum**

- 4.18.1 No business shall be transacted, where a vote is required, at a meeting of the Board of Directors unless at least two Executive Directors, two Non-Executive Directors and the Chairman, or nominated Deputy Chairman for the purpose of this meeting, are present and to be properly constituted the number of Non-Executive Directors (including the Chairman) voting must exceed the number of Executive Directors. This paragraph should be read in conjunction with paragraph 4.13.1 of Annex 7 of this constitution.
- 4.18.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 4.18.3 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 (see SO 8) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee).

#### **4.19 Meetings: Electronic Communication**

- 4.19.1 In this SO, “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 4.19.2 A Director in electronic communication with the Chairman and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting they have the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 4.19.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In

the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chairman of the meeting is physically present.

4.19.4 Meetings held in accordance with this SO are subject to SO 4.18 (Quorum). For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.

4.19.5 The minutes of a meeting held in this way MUST state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

## **5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

5.1 Subject to SO 3.6 and such guidance as may be issued by NHS Improvement (Monitor), the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of SO 5.3 below or by a Director or an Officer in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

### **5.2 Emergency Powers**

5.2.1 The powers which the Board of Directors has retained to itself within these SOs may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board of Directors for ratification.

### **5.3 Delegation to committees**

5.3.1 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or subcommittees, or joint committees, which it has formally constituted. The Constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

5.3.2 When the Board is not meeting as the Trust in formal session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Trust in formal session.

## **5.4 Delegation to Officers**

- 5.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or joint-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Officers to undertake the remaining functions for which they will still retain accountability to the Board of Directors.
- 5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying their 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 Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements. Outside these statutory requirements the Finance Director shall be accountable to the Chief Executive for operational matters.
- 5.4.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs.

## **5.5 Duty to Report Non-Compliance with Standing Orders**

- 5.5.1 If for any reason these SOs 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 all Officers have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

## **6. COMMITTEES**

### **6.1 Appointment of Committees**

- 6.1.1 Subject to SO 3.6, the Regulatory Framework and such guidance issued by NHS Improvement (Monitor), the Board of Directors may and, if directed by NHS Improvement (Monitor),

shall appoint committees of the Trust consisting wholly or partly of Directors or other Health Service Bodies or wholly of persons who are not Directors of the Trust or other Health Service Bodies.

- 6.1.2 A committee appointed under SO 6.1.1 may, subject to the Regulatory Framework and such guidance and/or best practice advice as may be issued by NHS Improvement (Monitor) or the Board of Directors or other Health Service Bodies in question, appoint sub-committees or sub-groups consisting wholly or partly of Directors or wholly of persons who are not Directors of the Trust, the committee of the Trust or the other Health Service Bodies in question.
- 6.1.3 The SOs, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-groups established by the Board of Directors, in which case the term “Chairman” is to be read as a reference to the Chairman of the committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Trust in public.)
- 6.1.4 Each such committee, sub-committee or sub-group shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation, and/or regulations and/or such guidance or best practice advice issued by Monitor. Such terms of reference shall have effect as if incorporated into the SOs.
- 6.1.5 Where committees are authorised to establish sub-committees or sub-groups they may not delegate executive powers to the sub-committee/group unless expressly authorised by the Board of Directors.
- 6.1.6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors as defined by the Regulatory Framework. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

6.1.7 Where the Board of Directors is required to appoint persons to a committee and/or undertake statutory functions as required by the Secretary of State and/or NHS Improvement (Monitor), and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations and guidance made by NHS Improvement (Monitor).

6.1.8 The committees established by the Board of Directors are:

6.1.8.1 Audit Committee;

6.1.8.2 Remuneration Committee;

6.1.8.3 Charitable Funds Committee;

6.1.8.4 Finance Committee;

6.1.8.5 Quality and Governance Committee;

6.1.8.6 People Committee; and

6.1.8.7 Mental Health Act Committee

6.1.9 The terms of reference of those committees and sub-groups shall be agreed by the Board of Directors.

6.1.10 Notwithstanding the provisions of SO 6.1.7 above, the Board of Directors may establish other committees and sub-groups from time to time at its discretion.

## 6.2 **Confidentiality**

6.2.1 A member of a committee, sub-committee or joint 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.

6.2.2 A Director or a member of a committee, sub-committee or joint committee 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 or committee shall resolve that it is confidential.

## **7. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS**

- 7.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution.
- 7.1.1 The Directors, having regard to the views of the Council of Governors, are to prepare the Forward Plan in respect of each Financial Year to be given to NHS Improvement (Monitor).
- 7.1.2 The Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 7.2 The Annual Report is to give:
- 7.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership;
- 7.2.2 information on each non-executive director determining whether each is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement, with particular reference to paragraph 33 of the Constitution; and
- 7.2.3 any other information which NHS Improvement (Monitor) requires.
- 7.3 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to paragraphs 36 – 38 of the Constitution is included on the agenda for a meeting of the Board of Directors.
- 7.4 If the Council of Governors so desires such a matter as described within SO 7.3 to be included on an agenda item, they shall make their request in writing to the Chairman at least 10 (ten) Clear Days before the meeting of the Board of Directors, subject to SO 4.3. The Chairman shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 10 (ten) Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

## **8. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

8.1 The Regulatory Framework requires members of the Board of Directors to declare to the Secretary:

8.1.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter which is under consideration concerning the Trust or is to be considered by the Board of Directors; and

8.1.2 any interests including but not limited to any personal or family interests which are relevant and material to the business of the Trust, irrespective of whether those interests are direct or indirect, actual or potential'

8.2 Directors should declare such interests as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently should do so on appointment.

8.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the SOs and delivering it to the Secretary on appointment or as soon thereafter as the interest arises, but within 7 (seven) Clear Days of becoming aware of the existence of a relevant and material interest.

8.4 If a declaration under SO 8.1 or 8.2 above provided to be, or becomes, inaccurate or incomplete, the Director must make a further declaration before the Trust enters into the transaction or arrangement. This does not require a declaration of an interest of which the Director is not aware or whether the director is not aware of the transaction or arrangement in question.

8.5 A Director need not declare an interest:

8.5.1 if, it cannot reasonably be regarded as likely to give rise to a conflict of interest;

8.5.2 if, or to the extent that, the Directors are already aware of it;

8.5.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered by:

8.5.4 a meeting of the Board of Directors, or

8.5.5 by a committee of the Directors appointed for the purpose.

- 8.6 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.
- 8.7 If a Director has declared a pecuniary interest in accordance with SO 8.9 below they shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that proposed contract is under consideration. At the time the interests are declared, they should be recorded in the Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 8.8 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by NHS Improvement (Monitor):
- 8.8.1 Directorships, including Non-Executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
  - 8.8.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
  - 8.8.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
  - 8.8.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 8.8.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;
  - 8.8.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.
- 8.9 Any travelling or other expenses or allowances payable to a Director in accordance with the Constitution shall not be treated as a pecuniary interest.
- 8.10 Members of the Board of Directors of companies likely or possibly seeking to do business with the NHS should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.



8.11 A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

8.11.1 they, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

8.11.2 they are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

8.12 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

8.12.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or

8.12.2 of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

8.13 Where a Director:

8.13.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

8.13.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

8.13.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest.

8.14 In the case of Immediate Family members, the interest of one Immediate Family member shall, if known to the other, be deemed

for the purposes of the Constitution and the SOs to be also an interest of the other.

- 8.15 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. 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.
- 8.16 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 to Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this SO.
- 8.17 SO 8 applies to any committee, sub-committee of the Board of Directors and applies to any member of any such committee or sub-committee (whether or not they are also a Director) and will need to be read in conjunction with the applicable policy.

#### 8.18 **Register of Interests**

8.18.1 The register of interests of Directors shall contain the names of each Director, whether they have declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.

8.18.2 It is the obligation of the Director to inform the Secretary in writing within 7 (seven) Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate register of interests of Directors upon receipt of new or amended information as soon as is practical and, in any event, within 14 (fourteen) days.

8.18.3 The register of interests of Directors will be available to the public and the Chairman will take reasonable steps to bring the existence of the register of interests of Directors to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the register of interests of Directors must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register of Interests.

8.18.4 The details of Directors' interests recorded in the register of interests of Directors will be kept up to date by means of a regular review as necessary of the register of interests of Directors by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

## **9. STANDARDS OF BUSINESS CONDUCT**

### **9.1 Policy**

9.1.1 Directors and Officers should comply with the NHS Foundation Trust Code of Governance, the Nolan Principles, Standards for Members of NHS Boards and Clinical Commissioning Group governing bodies in England and any guidance and best practice advice issued by NHS Improvement (Monitor). This section of the SOs should be read in conjunction with these documents.

9.1.2 Directors and Officers should also comply with provisions of the Trust's Fraud Response Plan and Anti Bribery Policy.

### **9.2 Interest of Directors and Employees in Contracts**

9.2.1 If it comes to the knowledge of Director or an Officer that a contract in which they have any pecuniary interest not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive or Secretary of the fact that they are interested therein. In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed to be also the interest of that Immediate Family Member.

9.2.2 A Director or Officer must also declare to the Chief Executive or Secretary any other employment or business or other relationship of their, or of an Immediate Family Member, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with SO 8. The Trust shall require such interests to be recorded in the register of interests of Directors.

### **9.3 Canvassing of, and Recommendations by, Directors in Relation to Appointments**

9.3.1 Canvassing of Directors or members of any committee, sub-committee or joint 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 these SOs shall be included in application forms or otherwise brought to the attention of candidates.

9.3.2 A Director of the Board of Directors 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 Director from giving written testimonial of

a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

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

#### **9.4 Relatives of Directors or Officers**

- 9.4.1 Directors and Officers shall bear in mind that candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

- 9.4.2 The Directors and Officers shall disclose to the Chief Executive any relationship between themselves 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 Trust any such disclosure made.

- 9.4.3 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 member of the Board of Directors or holder of any office in the Trust.

- 9.4.4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 8 shall apply.

#### **9.5 External Consultants**

- 9.5.1 SO 9 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Scheme of Delegation should be adhered to at all times.

### **10. TENDERING AND CONTRACT PROCEDURE**

#### **10.1 Duty to comply with Standing Orders**

- 10.1.1 The procedure for making all contracts by or on behalf of the Trust shall comply with these SOs and the Trust's Standing Financial Instructions (SFIs) (except where SO 4.15. (Suspension of SOs) is applied).

## 10.2 EU Directives and Acts Governing Public Procurement

10.2.1 Directives by the Council of the European Union promulgated by the Department of Health (DH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these SOs.

10.2.2 The Bribery Act 2010, which came into effect on 1 July 2011, makes it a criminal offence to give promise or offer a bribe, and to request, agree to receive or accept a bribe, either at home or abroad. The Bribery Act 2010 shall have effect as if incorporated in these SOs.

10.2.3 The Trust shall adopt as good practice the requirements of the NHS England Business Case Approvals Process for Capital Investment, Property, Equipment and ICT 14 August 2013 Publications Gateway Reference: 00324 and Health Building Note 00-08 Part A: Strategic framework for the efficient management of healthcare estates and facilities and associated relevant guidance issued by Monitor/NHS Improvement (Monitor) in respect of capital investment and estate and property transactions, including the "Capital Regime, Investment and Property Business Case Approval Guidance for NHS Trusts and Foundation Trusts November 2016.

10.2.4 In the case of management consultancy contracts the Trust shall adopt, as far as is practicable, the NHS Executive guidance "The Procurement and Management of Consultants within the NHS". The Trust will also comply with the Guidance from NHS Improvement (Monitor) entitled "Best Practice in Making Investments" and the Regulatory Framework.

10.2.5 The Trust should have policies and procedures in place for the control of all tendering activity.

## 10.3 Formal Competitive Tendering

10.3.1 The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the Department of Health or other regulatory organisations); for the design, construction and maintenance of building and engineering works (including construction and concession contracts); and for disposals.

10.3.2 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive where:

- 10.3.2.1. the estimated expenditure or income does not, or is not reasonably expected to, exceed £50,000 excl VAT (this figure to be reviewed annually); or
  - 10.3.2.2 the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with;
  - 10.3.2.3 where the requirement is covered by an existing national, regional or local contract or framework
  - 10.3.2.4 where provided for in regulatory guidance.
- 10.3.3 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive:
- 10.3.3.1 in very exceptional circumstances where the Chief Executive decides that formal tendering procedures would not be practicable or the estimated expenditure or income would not warrant formal tendering procedures, and the circumstance are detailed in an appropriate Trust record;
  - 10.3.3.2 where the timescale genuinely precludes competitive tendering (failure to plan the work properly is not a justification for single tender);
  - 10.3.3.3 where it is apparent from the specification that specialist expertise is required to meet it and the expertise is only available from one source;
  - 10.3.3.4 where the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
  - 10.3.3.5 where there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering;
- 10.3.4 The waiving of competitive tendering procedures should not be used:
- 10.3.4.1 to avoid competition or for administrative convenience or to award further work to a consultant

originally appointed through a competitive procedure;

10.3.4.2 for building and engineering construction works, and maintenance (other than in accordance with Concode or other relevant regulatory guidance) without Departmental of Health approval.

10.3.5 Where it is decided that competitive tendering is not applicable and should be waived by virtue of SO 10.3.3.1 to SO 10.3.3.4 above the fact of the waiver and the reasons should be documented and recorded in an appropriate Trust record and reported by the Chief Executive to the Audit Committee.

10.3.6 Except where SO 10.3.2 and SO 10.3.3, or a requirement under SO 10.2, applies, the Board of Directors shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and where possible, no less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.

10.3.7 Items estimated to be below the limit set in this Standing Order for which formal tendering procedures are not used which subsequently prove to have a value above such limits shall be reported to the Chief Executive, and be recorded in an appropriate Trust record.

10.3.8 The Board of Directors shall review the Tendering Procedure at least every two years.

#### **10.4 Invitation to tender**

10.4.1 All invitations to tender shall state the date and time as being the latest time for the receipt of tenders.

10.4.2 All invitations to tender shall be by an e-tendering software package. The suppliers response shall be completed on-line and uploaded into a secure electronic mailbox until the opening time.

10.4.3 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in SO 10.4.2.2 and 10.4.3 below.

10.4.4 Every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

10.4.5 Every tender for building or engineering works (except for maintenance work, when Estatecode or other relevant regulatory guidance shall be followed) shall embody or be in the terms of the current edition of one of the Joint Contracts Tribunal Standard Forms of Building Contract or Department of the Environment (GC/Wks) Standard forms of contract amended to comply with Concode; or, when the content of the work is primarily engineering, the General Conditions of Contract recommended by the Institution of Mechanical and Electrical Engineers and the Association of Consulting Engineers (Form A), or (in the case of civil engineering work) the General Conditions of Contract recommended by the Institute of Civil Engineers, the Association of Consulting Engineers and the Federation of Civil Engineering Contractors. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DH or modified and/or amplified to accord with guidance issued by NHS Improvement (Monitor) and the Department of Health and, in minor respects, to cover special features of individual projects.

10.4.6 Each significant member of Trust staff involved in the tendering process must declare any interests relating to the project they are overseeing.

## 10.5 **Receipt and safe custody of Formal tenders**

10.5.1 The tender documents will be stored in the electronic mailbox until the closing date and time. An audit log within the e-tendering system will record the data and time the offer documents are received.

## 10.6 **Opening ~~Hard Copy~~ Formal tenders**

10.6.1 Where an electronic tendering package is used the tender documents will be opened electronically by two independent professionals from the procurement service.

10.6.2 Each significant member of staff involved in the tendering process is to declare any interests relating to the project they are overseeing. Where an electronic tendering package is used the details of the persons opening the documents will be



recorded in the audit trail together with the date and time of the document opening.

10.6.3 All actions by both procurement staff and suppliers shall be recorded within the system audit reports.

## 10.7 **Admissibility**

10.7.1 If for any reason the designated officers are of the opinion that the tenders received are not strictly competitive (for example, because their numbers are insufficient or any are amended, incomplete or qualified) no contract shall be awarded without the approval of the Chief Executive.

10.7.2 Where only one tender is sought and/or received, the Chief Executive and Director of Finance shall, as far practicable, ensure that the price to be paid is fair and reasonable and will ensure value for money for the Trust.

## 10.8 **Late tenders**

10.8.1 Tenders received after the due time and date, but before the opening of the other tenders, may be considered only if the Chief Executive or their Nominated Officer decides that there are exceptional circumstances, eg where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned.

10.8.1.1 The Chief Executive or Nominated Officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender shall be reported to the Board at its next meeting.

10.8.1.2 Technically late tenders (ie those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.

10.8.1.3 Incomplete tenders (ie those from which information necessary for the adjudication of the tender is missing) and amended tenders (ie those amended by the tenderer upon their own initiative either orally or in writing after the due time for receipt) will be dealt with in the same way as late tenders.

10.8.1.4 Where examination of tenders reveals errors or incompleteness which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing their offer.

10.8.1.5 While decisions as to the admissibility of late, incomplete or amended tenders are under consideration, the tender documents shall be kept strictly confidential, and the process of evaluation shall not be started.

## 10.9 **Acceptance of formal tenders**

10.9.1 Any discussions with a tenderer which are deemed necessary to clarify technical aspects of their tender before the award of a contract will not disqualify the tender.

10.9.2 A tender other than the lowest whole life cost (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason and the decision and reason recorded as a written record using the appropriate Tender Acceptance Authorisation Form.

10.9.3 Where other factors are taken into account in selecting a tenderer, these must be clearly recorded and documented in the contract file, and the reason(s) for not accepting the lowest tender clearly stated.

10.9.4 No tender shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these instructions except with the authorisation of the Chief Executive.

10.9.5 The use of these procedures must demonstrate that the award of the contract was:

10.9.5.1 not in excess of the going market rate/price current at the time the contract was awarded, and

10.9.5.2 achieved best value for money;

10.9.6 In considering which tender to recommend, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. This will take the form of an official evaluation process involving a consideration of both commercial and technical aspects, any

key stakeholders involved in the tender process. In cases of doubt they shall consult the Chief Executive via the completion of a Recommendation Report. The Chief Executive or Director of Finance, see SO 10.16.1.1 for authorisation levels, shall approve acceptance of the tender in writing to the responsible officer. (Larger tenders ie those exceeding a total value of £1,000,000 (inc Vat) shall be referred to the Trust Board for approval).

10.9.7 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.

10.9.8 All tenders shall be treated as confidential and shall be retained for inspection.

#### **10.10 Tender reports to the Trust Board**

10.10.1 Reports to the Board of Directors will be made on an exceptional circumstance basis only.

#### **10.11 List of approved firms**

##### **10.11.1 Building and Engineering Construction Works**

10.11.1.1 Invitations to tender shall be made only to firms included on either an approved list of tenderers compiled by the Trust or by neighbouring Trusts or on the Construction Line, NHS Supply Chain or other national or regional purchasing framework list.

10.11.1.2 Firms included on approved list of tenderers shall ensure that when engaging, training, promoting or dismissing employees or in any conditions of employment, shall not discriminate against any person and shall act in accordance with all relevant employment legislation and guidance.

10.11.1.3 Firms shall conform at least with the requirements of the Health and Safety at Work Act 1974 (as amended) and any amending and/or other related legislation concerned with the health, safety and welfare of workers and other persons, and to any relevant British standard code of practice issued by the British Standard Institution. Firms must provide to the appropriate Officer a copy of its safety policy and evidence of the safety of plant and equipment, when requested.

### 10.11.2 Financial Standing and Technical Competence of Contractors

10.11.2.1 The Director of Finance may make or institute any enquiries he deems appropriate concerning the financial standing and financial suitability of approved contractors. The Director with lead responsibility for clinical governance will similarly make such enquiries as is felt appropriate to be satisfied as to their technical/medical competence.

### 10.12 Exceptions to using approved contractors

10.12.1 If in the opinion of the Chief Executive and the Director of Finance or the Director with lead responsibility for clinical governance it is impractical to use a potential contractor from a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on a list), or where a list for whatever reason has not been prepared, the Chief Executive shall ensure that appropriate checks are carried out as to the technical and financial capability of those firms that are invited to tender or quote.

10.12.2 An appropriate record in the contract file shall be made of the reasons for inviting a tender or quote other than from an approved list.

### 10.13 Competitive Quotations

10.13.1 Quotations are required to be obtained where formal tendering procedures have been waived under SOs 10.3.2 or 10.3.3 and where the intended expenditure or income exceeds, or is reasonably expected to exceed the limits defined in the Scheme of Delegation and/or the SFIs.

10.13.2 Where quotations are obtained under SO 10.14 they shall be obtained from at least three firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the Board of Directors.

10.13.3 Quotations shall be in writing.

10.13.4 All quotations shall be treated as confidential and shall be retained for inspection.

10.13.5 The Chief Executive or their Nominated Officer shall evaluate the quotations and select the one which gives value for money. If this is not the lowest quotation then this fact

and the reasons why the lowest quotation was not chosen shall be recorded in a permanent record and a Quotation Acceptance Authorisation Form completed.

## 10.14 Non-Competitive Quotations

10.14.1 Non-competitive quotations in writing may be obtained, in exceptional circumstances, for the following purposes:

10.14.1.1 the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or their Nominated Officer, possible or desirable to obtain competitive quotations;

10.14.1.2 the supply of goods or manufactured articles of any kind which are required quickly and are not obtainable under existing contracts. The Trust shall use National Contracts awarded by such Government Bodies as Government Procurement or NHS Supply Chain for procurement of all goods and services unless the Chief Executive or nominated officers deem it inappropriate. The decision to use alternative sources must be documented.

10.14.1.3 the supply of goods or manufactured articles of any kind which are required quickly and are not obtainable under existing contracts, the approvals required for these courses of action will be by reference to the financial limits set out in Appendix 1 of the Standing Financial Instructions.

10.14.1.4 miscellaneous services, supplies and disposals;

10.14.1.5 where the goods or services are for building and engineering maintenance the responsible works manager must verify that the first two conditions of this Standing Order eg SO 10.14.1.1 and SO 10.14.1.2 apply)

10.14.1.6 where tenders or quotations are not required, because expenditure is below the limits set in Appendix 1 of the Standing Financial Instructions, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board of Directors.

## 10.15 Quotations to be within Financial Limits

10.15.1 No quotation shall be accepted which will commit expenditure in excess of that which has been allocated by the Trust and which is not in accordance with these SOs except with the authorisation of either the Chief Executive or Director of Finance.

## 10.16 Authorisation of Tenders and Competitive Quotations

10.16.1 Providing all the conditions and circumstances set out in these SOs have been fully complied with, formal authorisation and awarding of a contract may be decided by the following staff to the value of the contract as follows:

### 10.16.1.1 Contracts **awarded to the lowest bidder.**

10.16.1.1.1. Below £50,000 - main list authorised signatory

10.16.1.1.2. £50,000 - £1,000,000 - an Executive Director

10.16.1.1.3. Above £1,000,000 – Trust Board - to be recorded in minutes.

### 10.16.1.2 **The Finance Director must approve any contracts not awarded to lowest bidder.**

10.16.1.2.1. Below £50,000 - Director of Finance or Chief Executive

10.16.1.2.2. £50,000 - £1,000,000 Chief Executive and Chairman

10.16.1.2.3 Above £1,000,000 – Trust Board – to be recorded in minutes.

### 10.16.1.3 **Contracts above £1,000,000 incl VAT (over the full period of the contract) must be approved by the Board of Directors.**

10.16.2 These levels of authorisation may be varied or changed from time to time by the Board of Directors and need to be read in conjunction with the Scheme of Delegation and/or SFIs.

10.16.3 Formal authorisation must be put in writing. In the case of authorisation by the Board of Directors this shall be recorded in their minutes.

## **10.17 Instances where formal competitive tendering or competitive quotation is not required**

10.17.1 Where competitive tendering or a competitive quotation is not required, the Trust should adopt one of the following alternatives:

10.17.1.1 the Trust shall use the NHS supply chain for procurement of all goods and services unless the Chief Executive or their Nominated Officer deem it inappropriate. The decision to use alternative sources must be documented;

10.17.1.2 if the Trust does not use the NHS supply chain (where tenders or quotations are not required, because expenditure is below £5,000), the Trust shall procure goods and services in accordance with procurement procedures approved by the Director of Finance.

## **10.18 Private Partnership**

10.18.1 The Trust should normally market-test for "Private Partnership" funding when considering a capital procurement. When the Board of Directors proposes, or is required, to use finance provided by the private sector the following shall apply:

10.18.1.1 The Chief Executive and Finance Director shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.

10.18.1.2 Where the sum exceeds delegated limits, a business case must be referred to NHS Improvement (Monitor) and/or Department of Health for approval or treated as per current guidelines.

10.18.1.3 The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to vices.

10.18.1.4 The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

## **10.19 Compliance Requirements for all Contracts (including lease contracts)**

10.19.1 The Board of Directors may only enter into contracts on behalf of the Trust within its statutory powers and within the Regulatory Framework and shall comply with:

10.19.1.1 these SOs;

10.19.1.2 the SFIs;

10.19.1.3 the Trust's Provider Licence;

10.19.1.4 statutory provisions including those giving effect to EU Directives;

10.19.1.5 such of the NHS Standard Contract Conditions as are applicable;

10.19.1.6 appropriate NHS guidance;

10.19.2 Where appropriate, contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

10.19.3 Contracts shall include lease and hire purchase agreements.

10.19.4 In all contracts made by the Trust, the Board of Directors shall endeavour to obtain value for money by use of all systems in place. The Chief Executive shall nominate an Officer who shall oversee and manage each contract on behalf of the Trust.

## **10.20 Personnel and Agency or Temporary Staff Contracts**

10.20.1 The Chief Executive shall nominate Officers with delegated authority to enter into contracts for the employment of other Officers and to enter into contracts for the employment of agency staff or temporary staff service contracts.

## **10.21 Healthcare Services Agreements**

10.21.1 Healthcare Services contracts made between two Health Service Bodies for the supply of healthcare services, will be legally binding contracts and are subject to the provisions of the 2006 Act and any other relevant legislation.

10.21.2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services from providers of healthcare services.



## 10.22 Cancellation of Contracts

10.22.1 Except where specific provision is made in model forms of contracts or standard schedules of conditions approved for use within the NHS, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if:

10.22.1.1 the contractor has offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust; or

10.22.1.2 the contractor has shown or foreborne favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by them or acting on their behalf (whether with or without the knowledge of the contractor); or

10.22.1.3 in relation to any contract with the Trust the contractor or any person employed by them or acting on their behalf shall have committed any offence under the Prevention of Corruption Acts 1989 and 1916, the Prevention of Corruption (Amendment) Act 2018, Bribery Act 2010, and other appropriate legislation.

## 10.23 Determination of Contracts for Failure to Deliver Goods or Material

10.23.1 There shall be inserted in every written contract for the supply of goods or materials entered into by the Trust a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may (without prejudice) determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good such default.

10.23.2 The clause referred to at 10.23.1 shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been

payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

## 10.24 Contracts Involving Funds held on Trust

10.24.1 Contracts involving Funds held on Trust shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

10.24.2 SO 10.24.1 shall not only apply to expenditure from Exchequer funds but also to works, services and goods purchased from the Trust's trust funds and private resources.

## 11 DISPOSALS

11.1 **Competitive** Tendering or Quotation procedures shall not apply to the disposal of:

11.1.1 any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or their Nominated Officer;

11.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;

11.1.2.1 items to be disposed of with an estimated sale value as set out in the Scheme of Delegation;

11.1.3 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract; or

11.1.4 land or buildings concerning which Department of Health guidance has been issued but subject to compliance with such guidance; or

11.1.5 any matter which NHS Improvement (Monitor) has issued alternate specific guidance and/or best practice advice in relation to.

## 12 IN-HOUSE SERVICES

12.1 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering.

12.2 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:

12.2.1 "specification group", comprising the Chief Executive or Nominated Officer(s) and specialist(s).

12.2.2 "in-house tender group", comprising representatives of the in-house team, a nominee of the Chief Executive and appropriate technical support.

12.2.3 "evaluation group", comprising normally a specialist Officer, a supplies Officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £500,000 a non-Officer member should be a member of the evaluation team.

12.3 All groups referred to in SO 12.2.1 to SO 12.2.2 should work independently of each other but individual Officers may be a member of more than one group. No member of the "in-house tender group" may, however, participate in the evaluation of tenders.

12.4 The "evaluation group" shall make recommendations to the Board of Directors.

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

### **13.1 Custody of Seal**

13.1.1 The Common Seal of the Trust shall be kept by the Secretary to the Trust or Nominated Officer in a secure place.

### **13.2 Sealing of Documents**

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

13.2.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an Officer nominated by them) and authorised and countersigned by the Chief Executive (or an Officer nominated by them who shall not be within the originating directorate).

### **13.3 Register of Sealing**

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

## **14 SIGNATURE OF DOCUMENTS**

14.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

14.2 The Chief Executive or Nominated Officers 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 committee or sub-committee to which the Board of Directors has delegated appropriate authority.

## **15 MISCELLANEOUS**

### **15.1 Standing Orders to be given to Members and Officers**

15.1.1 It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are notified of and understand their responsibilities within the SOs and the 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 the SOs.

### **15.2 Documents having the standing of Standing Orders**

15.2.1 The SFIs and the Scheme of Delegation shall have the effect as if incorporated into the SOs.

### **15.3 Review of Standing Orders**

15.3.1 The SOs shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

## 15.4 **Corporate Documents**

15.4.1 Any corporate documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

## **ANNEX 8 - FURTHER PROVISIONS**

*(Ref. Paragraphs 5, 9 and 31)*

### **1. DISQUALIFICATION AND EXPULSION FROM MEMBERSHIP OF THE TRUST**

- 1.1 An **individual** shall not become or continue as a Member of the Trust if they:
- 1.1.1 fail or cease to fulfil the criteria for membership of the Public Constituencies, or the Staff Constituency under the provisions of this Constitution to be a Member;
  - 1.1.2 are less than 12 years of age at the time of their application to become a Member;
  - 1.1.3 were formerly employed by the Trust or the NHS Trust and were dismissed for gross misconduct;
  - 1.1.4 have been identified as a Vexatious Complainant in line with the relevant policy.
  - 1.1.5 have been placed on the Sex Offenders Register and/or is subject to a Sex Offenders Order;
  - 1.1.6 have been involved as a perpetrator in a serious incident of violence or abuse within the last five years at any NHS hospital or facility or against any NHS employee or other persons who exercise functions for the purpose of a Health Service Body;
  - 1.1.7 have been previously expelled as a member by the Council of Governors or by another NHS foundation trust, and has not been subsequently re-admitted by the Council of Governors;
  - 1.1.8 A person may not become or remain a Member of the Trust if they have demonstrated aggressive or violent behaviour at any Hospital and following such behaviour they have been asked to leave, have been removed or excluded from any Hospital in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients.
  - 1.1.9 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member the Secretary shall give the Member 14 days written notice to show cause why their name should not be removed from the register of Members. On receipt of any such information supplied by the Member, the Secretary may, if they consider it appropriate, remove the Member from the register of Members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine.

- 1.1.10 Have deemed to have acted in a manner contrary to the interests of the Trust; or
  - 1.1.11 do not agree to abide by the Trust's principles (as set out in paragraph 2 of this Annex 8).
- 1.2 An **individual** shall cease to be a Member if they:
- 1.2.1 resign by;
    - 1.2.1.1 giving notice in writing to the Trust, or
    - 1.2.1.2 telephoning the Trust and confirming their wish to resign, with such resignation to take effect on written confirmation of their resignation by the Trust;
  - 1.2.2 are disqualified or expelled pursuant to this paragraph 1 from membership under this Constitution;
  - 1.2.3 die;
  - 1.2.4 cease to fulfil the requirements of paragraphs 5, 6, 7 or 8 of this Constitution, as the case may be;
  - 1.2.5 have not provided a current postal address.
- 1.3 It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A Member who becomes aware of their ineligibility shall be under a duty to inform the Secretary as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a Member.
- 1.4 Where the Secretary has reason to believe that a Member is ineligible for membership or may be disqualified from membership under this Constitution, the Secretary shall carry out reasonable enquiries to establish if this is the case.
- 1.5 Where the Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified from membership, the Secretary shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within 28 days or such other reasonable period as the Secretary may in their absolute discretion determine. Any representations received shall be considered by the Secretary and a decision made on the Member's or applicant's eligibility or disqualification as soon as reasonably practicable and notice in writing of that decision shall be given to the Member or applicant within 14 days of the decision being made.
- 1.6 If no representations are received within the said period of 28 days or longer period (if any) permitted under the preceding paragraph, the Secretary shall be

entitled nonetheless to proceed and make a decision on the member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from them.

- 1.7 Upon a decision being made under paragraphs 1.5 or 1.6 of this Annex 8 above that the Member is ineligible for or disqualified from membership the Member's name shall be removed from the Register of Members forthwith and they shall thereupon cease to be a Member.
- 1.8 Any decision made under this Annex 8 to disqualify a Member or an applicant for membership may be referred by the Member or applicant concerned to the Dispute Resolution Procedure under paragraph 4 of this Annex 8.

## **NHS AND TRUST PRINCIPLES**

### **1.9 NHS core principles**

- 1.9.1 The NHS will provide a universal service for all based on clinical need, not ability to pay.
- 1.9.2 The NHS will provide a comprehensive range of services.
- 1.9.3 The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.
- 1.9.4 The NHS will respond to different needs of different populations.
- 1.9.5 The NHS will work continuously to improve the quality of services and to minimise errors.
- 1.9.6 The NHS will support and value its staff.
- 1.9.7 The NHS will work together with others to ensure a seamless service for patients.
- 1.9.8 The NHS will help keep people healthy and work to reduce health inequalities.
- 1.9.9 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

### **1.10 Representative membership**

- 1.10.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those eligible for membership. To this end:



1.10.1.1 The Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time at least every three years.

1.10.1.2 The Council of Governors shall present to each Annual Meeting:

2.2.1.2.1. a report on steps taken to secure that, taken as a whole, the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership;

2.2.1.2.2. the progress of the membership strategy; and

2.2.1.2.3. any changes to the membership strategy.

## 1.11 Co-operation with health service and other bodies

1.11.1 In exercising its functions, the Trust shall co-operate with Health Service Bodies and any local authority with which the Trust has a Local Authority Partnership Agreement.

1.11.2 Notwithstanding the provisions of paragraph 2.3.1. above, the Trust shall co-operate with any specific third party body that it has a duty (statutory, contractual, or otherwise) to co-operate with.

## 1.12 Respects for rights of people

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

## 2 APPOINTMENT OF CHAIRMAN AND NON-EXECUTIVE DIRECTORS

2.1 Decisions and processes regarding the appointment and reappointment of the Chairman and Non-Executive Directors of the Trust are solely within the purview of the Council of Governors.

2.1.1 The Nominations and Remuneration Committee has delegated powers from the Council of Governors to consider the Non-Executive Director or Chairman vacancies due in the next 12 months and make recommendations to the Council of Governors.

2.1.2 The Nominations and Remuneration Committee shall:

2.1.2.1 recommend the re-appointment of an existing Non-Executive Director/Chairman or if applicable the recruitment process for

the Chairman and Non-Executive Directors (as may be the case).

- 2.1.2.2 take advice, as necessary, from the Director of People and Organisational Development and the Trust Secretary or other internal or external sources.
- 2.1.2.3 report its recommendations regarding the re-appointment of the Non-Executive Director or Chairman as an agenda item in a timely manner at a Council of Governors meeting for decision, or:
- 2.1.2.4 report its recommendations regarding the recruitment process for the Non-Executive Director or Chairman post as an agenda item in a timely manner to the Council of Governors meeting for decision.
- 2.1.2.5 make recommendations to the Council of Governors meeting in relation to pay and tenure of Non-Executive Directors/Chairman for the Council of Governors' decision. Each period of appointment (or re-appointment) will be to a maximum of three years, and any re-appointment over six years will be subject to particularly rigorous review. Any re-appointment over six years will be subject to annual re-appointment to provide assurance that the Non-Executive Director seeking re-appointment retains their independence of character and judgement
- 2.1.2.6 ensure that a formal, rigorous and transparent procedure is followed, which takes into account the needs of the organisation, the balance of expertise and experience on the Board, eligibility of existing Non-Executive Directors or Chairman to stand for a further term, and any other relevant factors. This is not an exhaustive list of the matters which may need to be considered by the Nominations and Remuneration Committee, but is merely intended to act as a guide.

2.2 Subject to the provisions of paragraph 2.1 of this Annex 8 above, the process for appointing new Non-Executive Directors and the Chairman, including the potential re-appointment of the Chairman and Non-Executive Directors, will be as follows:

- 2.2.1 No later than six months before the end of the term of office of the Chairman or a Non-Executive Director (as the case may be), the Nominations and Remuneration Committee will consider, paying due regard to the provisions set out in paragraph 2.1.2., the formal performance evaluation for the Non-Executive Director or Chairman for the previous two years, skills and experience and eligibility of existing Non-Executive Directors prepared to stand for re-appointment. The reason for considering the performance of existing Non-Executive Directors will be to inform the decisions made regarding the re-

appointment of the Non-Executive Director or Chairman, or the recruitment process to be followed. However, nothing within this paragraph will preclude the Nominations and Remuneration Committee from considering other relevant circumstances when deciding on the recruitment process as outlined in paragraph 2.1.2 above. Having due regard to the needs of the composition of the Board, the Nominations and Remuneration Committee may either 1) recommend to the Council of Governors that 1) an external recruitment process is followed or 2) recommend the re-appointment, pay, length of term of an existing Non-Executive Director. For the avoidance of doubt, if the recommendation to re-appoint a Non-Executive Director or Chairman is approved by the Council of Governors, there is no requirement to set up an Appointments Panel, unless this is specifically requested by the Council of Governors.

- 2.2.2 Following a recommendation to follow an external recruitment process, and subject to the Council of Governors' agreement, the Council of Governors will appoint an Appointments Panel to undertake the recruitment process. The Appointments Panel will be constituted in accordance with paragraphs 2.2.4 and 2.2.5 of Annex 8 below.
- 2.2.3 The current Chairman or a Non-Executive Director may stand for reappointment, subject to the conditions at paragraph 2.2 of Annex 8 above.
- 2.2.4 The Appointments Panel for the Chairman will consist of the Senior Independent Director, or if the Senior Independent Director is standing for appointment a Non-Executive Director who is not standing for appointment, two Elected Governors, and one Appointed Governor. If the number of Elected/Appointed Governors prepared to serve on the Appointments Panel is greater than the number of places available, the Panel members will be selected by election by the Elected/Appointed Governors respectively. A Public Governor will chair the Appointments Panel. Each member of the Appointments Panel will have one vote. The chairman of another NHS foundation trust will be invited to act as an independent assessor to the Appointments Panel.
- 2.2.5 The Appointments Panel for Non-Executive Directors will consist of the Chairman, two Elected Governors, and one Appointed Governor. If the number of Elected/Appointed Governors prepared to serve on the Appointments Panel is greater than the number of places available, the Panel members will be selected by election by the Elected/Appointed Governors respectively. The Chairman will chair the Appointments Panel. Each member of the Appointments Panel will have one vote.
- 2.2.6 Appropriate candidates (not more than 5 (five) for each vacancy) will be identified by an Appointments Panel.
- 2.2.7 The Appointments Panel constituted under paragraphs 2.2.4 and 2.2.5 of this Annex 8 above will be supported by appropriate advice from the

Trust's Director of People and Organisational Development on the qualifications, skills and experience required for each position. They may also work with an external organisation recognised as expert at appointments to identify the qualifications, skills and experience required for Non-Executive Directors.

2.2.8 The Council of Governors will not consider nominations for the Chairman and other Non-Executive Directors other than those made by the appropriate Appointments Panel.

2.2.9 The Appointments Panel will make recommendations to the Council of Governors meeting about the preferred candidate to be appointed to the Non-Executive Director or Chairman post for the Council of Governors' decision.

### **3 INDEMNITY**

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

3.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for its own benefit and for the benefit of the Council of Governors, Board of Directors and the Secretary.

### **4 DISPUTE RESOLUTION PROCEDURES**

#### **4.1 Dispute about entitlement to membership**

4.1.1 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 they may appeal in writing within 14 days of the Secretary's decision to the Council of Governors or a delegated committee or sub-committee of the Council of Governors whose decision shall be final.

#### **4.2 Dispute in relation to this Constitution (other than about membership)**

4.2.1 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chairman who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chairman they may appeal in writing within 14 days of

the Chairman's decision to the Board of Directors whose decision shall be final.

#### **4.3 Dispute between the Council of Governors and Board of Directors**

4.3.1 In the event of dispute between the Council of Governors and the Board of Directors the Raising Concern Policy will apply.

4.3.1 In the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;

4.3.2 If the Chairman is unable to resolve the dispute they shall appoint a special committee comprising equal numbers of Directors and Governors 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;

4.3.3 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.

### **5 AMENDMENT OF THE CONSTITUTION**

5.1 The Trust may make amendments to this Constitution only if:

5.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and

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

5.2 Amendments made under paragraph 5.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

5.3 Where an amendment as per paragraph 5.1 is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –

5.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

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

- 5.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 5.5 Amendments by the Trust of its constitution are to be notified to NHS Improvement (Monitor). For the avoidance of doubt, NHS Improvement (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.

## **6 DISSOLUTION OF THE TRUST**

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

## **7 NOTICES**

- 7.1 Save where a specific provision of the Constitution otherwise requires or permits, any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose.
- 7.2 In this paragraph 7 of Annex 8 of this Constitution "electronic communication" shall have the meaning set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 7.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 7.1 of Annex 8 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.

## **8 THE ROLE AND RESPONSIBILITIES OF THE SECRETARY**

- 8.1 The Trust shall have a Secretary who may be an employee of the Trust, but may not be a Governor, the Chief Executive or the Finance Director of the Trust.
- 8.2 Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected to:
- 8.2.1 Ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors and Members;

- 8.2.2 Ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for the Board of Directors) are complied with;
- 8.2.3 Ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for Governors) are complied with;
- 8.2.4 Advise the Board of Directors and the Council of Governors (through the Chairman or the Deputy Chairman, as the case may be) on all governance matters; and
- 8.2.5 Be available to give advice and support to individual Directors and assistance with professional development.

## **ANNEX 9 – ANNUAL MEMBERS MEETING**

1. The Trust shall hold an annual meeting of its members ('Annual Members' Meeting') so that there is no more than fifteen calendar months between one meeting and the next.
2. The Annual Members' Meeting shall be open to members of the public.
3. The following documents are to be presented to Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance:
  - 3.1 the Annual Accounts;
  - 3.2 any report of the Auditor on them; and
  - 3.3 the Annual Report;
4. Where an amendment is made to the constitution as per Annex 8 paragraph 5.1 in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust).
  - 4.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 4.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
5. The Council of Governors shall present to the Annual Members Meeting:
  - 5.1 A report on the proceedings of its meetings held since the last annual meeting;
  - 5.2 A report on the progress since the last annual meeting in developing the membership strategy is fully representative of the persons who are eligible to be Members under the Constitution;
  - 5.3 A report on any change to the Governors which has taken place since the last annual meeting; and
  - 5.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.