

COUNCIL OF GOVERNORS' MEETING

A General Meeting of the Somerset NHS Foundation Trust's Council of Governors will be held on **Wednesday 15 December 2021 at 15:00 via Microsoft Teams.**

[Click here to join the meeting](#)

If you are unable to attend, would you please notify Mrs Carol Lydiate, Governor and Membership Support Officer and PA to the Chairman, Mobile: 07425 633142.

Yours sincerely

COLIN DRUMMOND
CHAIRMAN

A G E N D A

- | | | | |
|--------------|---|-------|-----------------------|
| 1.
15:00 | APOLOGIES FOR ABSENCE
Apologies have been received from: Pippa Moger, Matthew Bryant, Kate Fallon, Stephen Fowler | Chair | |
| 2. | QUESTIONS FROM MEMBERS OF THE PUBLIC | Chair | |
| 3. | DECLARATION OF ELIGIBILITY TO VOTE | CL | Verbal |
| 4. | DECLARATIONS OF CONFLICT OF INTERESTS IN RESPECT TO ITEMS ON THE AGENDA | CD | Verbal |
| 5. | TO APPROVE: <ul style="list-style-type: none"> • The draft minutes of the Public meeting held on 29 September 2021 | Chair | Enc A |
| 6. | MATTERS ARISING AND REVIEW OF THE ACTION LOG | Chair | Enc B |
| 7. | TO RECEIVE THE PUBLIC REGISTER OF COUNCIL OF GOVERNORS INTERESTS | Chair | Enc C |
| 8.
15:10 | CHAIRMAN'S UPDATE <ul style="list-style-type: none"> • Council of Governors' attendance • Statutory Duties of Governors 2020/21 – update | Chair | Enc D
Enc Di |
| 9.
15:20 | PERFORMANCE UPDATE FROM THE EXECUTIVE DIRECTORS (PRESENTATION)
<i>In attendance: Lee Cornell, Associate Director – Planning and Performance and Mark Hocking, Deputy Finance Director</i> | Execs | Presentation
Enc E |
| 10.
15:45 | CHIEF EXECUTIVE UPDATE <ul style="list-style-type: none"> • Appointment of Joint Executive Team | PL | Verbal |

11. 16:10	TO RECEIVE AN UPDATE ON THE MERGER PROGRESS OF DISCUSSION WITH YEOVIL DISTRICT HOSPITAL	DS	Presentation Enc F
12. 16:25	TO APPROVE THE CONSTITUTION AND STANDING ORDERS FOR THE MERGED ORGANISATION <ul style="list-style-type: none"> • Constitution • Standing Orders 	PB	Enc G Enc Gi
13. 16:35	TO RECEIVE AN UPDATE FROM THE MEMBERSHIP STRATEGY GROUP	JK	Presentation Enc H
	GOVERNOR QUESTIONS		Verbal
14. 16:45	FEEDBACK FROM: <ol style="list-style-type: none"> 1) Report from the Lead and Deputy Lead Governors 2) Governors – issues and any ensuing actions needed/taken 3) The Strategy and Planning Group meeting held on 10 November 2021 4) The Quality and Patient Experience Group meeting held on 12 November 2021 5) The People Group meeting held 4 November 2021 6) The Nomination and Remuneration Committee 7) Staff Governors 	IH/KB All PA JG LP IH	Verbal Verbal Enc I Enc J Enc K Enc L Verbal
15. 16:55	ANY OTHER BUSINESS <ul style="list-style-type: none"> • Future Agenda items for Council of Governors meetings 	All	Verbal
16.	DATES OF NEXT MEETINGS <p>The dates for 2022 are confirmed as follows:</p> <ul style="list-style-type: none"> • Wednesday 9 March – 14:00 – 16:00 • Wednesday 15 June - 16:00 – 18:00 • Wednesday 28 September (AGM) – 12:30 – 14:30 • Wednesday 14 December – 15:00 – 17:00 <p>If a quorum is not present on the above dates (and for this meeting), the adjourned meeting will take place seven days after the above dates, at the same time and at a venue to be confirmed.</p> <ul style="list-style-type: none"> • Wednesday 16 March – 14:00 – 16:00 • Wednesday 22 June – 16:00 – 18:00 • Wednesday 5 October (AGM) – 12:30 – 14:30 • Wednesday 21 December – 15:00 – 17:00 		
17.	WITHDRAWAL OF PRESS AND PUBLIC <p>To move that representatives of the press and other members of the public be excluded from the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest.</p>		

**MINUTES OF THE PUBLIC COUNCIL OF GOVERNORS'
ANNUAL GENERAL MEETING
HELD ON 29 SEPTEMBER 2021 AT 3.30 PM
VIA MS TEAMS**

PRESENT

Colin Drummond

POSITION / CONSTITUENCY

Chairman

Elected Governors

Ian Aldridge	Public – Somerset West and Taunton
Erica Adams	Public – Somerset West and Taunton
Jane Armstrong	Public – Somerset West and Taunton
Kate Butler	Public – Somerset West and Taunton
Richard Brown	Public - Mendip
Bob Champion	Public - Mendip
Melanie Devine	Public – Somerset West and Taunton
Stephen Fowler	Public – Mendip
Judith Goodchild	Public - Sedgemoor
Ian Hawkins	Public – South Somerset
Jeanette Keech	Public – Somerset West and Taunton
Eddie Nicolas	Public - Sedgemoor
Alan Peak	Public – Outside Somerset
Timothy Slattery	Public – Somerset West and Taunton
Sue Steele	Public – South Somerset
Gillian Waldron	Public – South Somerset
Margaret Worth	Public – Somerset West and Taunton
Sumitar Young	Public – Somerset West and Taunton

Staff Governors

Paul Aldwinckle	Staff – Community Services
Manuel Blanco-Guzman	Staff - Acute
Phil Hodgson	Staff - Acute
Owen Howell	Staff – Mental Health

Polly Maguire	Staff – Community Services
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Lynn Pearson	Staff - Acute
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Appointed/Partnership Governors

Robert Cornes	Taunton Samaritans
Jos Latour	Universities
Heather Shearer	District and Borough Councils
Caroline Toll	Carers UK
Rod Williams	Somerset County Council
Vacancy	District and Borough Council
Vacancy	GP Board

In Attendance

Peter Lewis	Chief Executive
David Allen	Non-Executive Director
Sube Banerjee	Non-Executive Director
Phil Brice	Director of Governance and Corporate Development
Matthew Bryant	Chief Operating Officer –hospital services
Isobel Clements	Director of People and Organisational Development
Barbara Clift	Non-Executive Director
Kate Fallon	Non-Executive Director
Barbara Gregory	Non-Executive Director
Stephen Harrison	Non-Executive Director
Andy Heron	Deputy CEO and Chief Operating Officer – mental health, neighbourhoods and families
Jan Hull	Non-Executive Director
Pippa Moger	Director of Finance
Hayley Peters	Chief Nurse
Alexander Priest	Non-Executive Director
David Shannon	Director of Strategic Development and Improvement
Matthew Hayman (deputising for Dan Meron)	Responsible Officer and Deputy Chief Medical Officer
Ria Zandvliet	Secretary to the Trust
Carol Lydiate	Governor and Membership Support Officer and PA to the Chairman (Notetaker)

Apologies

Philip Jackson	Public - Mendip
Jack Torr	Public - Sedgemoor
Dave Gudge	Public - Sedgemoor
Julie Vale	Staff - Acute
Jayne Chidgey-Clark	Somerset CCG
Daniel Meron	Chief Medical Officer
Neil Thomas	Staff Governor
Paddy Ashe	Public – South Somerset
Judy Cottrell	Public – Somerset West and Taunton
Julie Jones	Staff – Acute
Julius Ndlovu	Staff – Mental Health

1. APOLOGIES

The above apologies listed above were noted.

The Chairman opened the meeting and confirmed that the meeting was quorate.

2. QUESTIONS FROM MEMBERS OF THE PUBLIC

There were no questions from member of the public.

3. DECLARATION OF ELIGIBILITY TO VOTE

Due to the meeting being held on a virtual platform a copy of the Declarations in Relation to the Eligibility of Governors to Vote forms was circulated to Governors via email. The Chairman requested that Governors indicated by a show of hands if they no longer met the eligibility criteria.

There was no show of hands indicating that all Governors continue to meet the eligibility criteria.

4. DECLARATIONS OF CONFLICT IN RESPECT TO ITEMS ON THE AGENDA

There were no conflicts of interests declared in relation to the agenda items for this meeting.

5. TO APPROVE THE MINUTES OF THE SOMERSET NHS FOUNDATION TRUST PUBLIC COUNCIL OF GOVERNORS' MEETING HELD ON 16 JUNE 2021

The minutes of the Public Council of Governors' meeting held on 16 June 2021 were **approved** as a true and accurate record.

Proposer: Melanie Devine, Seconder: Sumitar Young.

6. ACTION LOG AND MATTERS ARISING

Item 15: Any Other Business – Public transport issue: David Shannon reported that this issue would be discussed at the Strategy and Planning Group meeting on 10 November 2021.

There were no further matters arising.

7. THE PUBLIC REGISTER OF COUNCIL OF GOVERNORS INTERESTS

The Council of Governors noted the changes to the register as outlined in the report.

8. CHAIRMAN'S UPDATE

Council of Governors' attendance: It was noted that there were no breaches in attendance to be brought to the attention of the Council of Governors.

Statutory Duties of Governors 2020/21 - update: The report was noted.

Governor resignations and appointments: The Chairman reported the following changes in governor representation in the Sedgemoor Constituency:

Following Martin Davidson's resignation on 31 August 2021 Jack Torr has been appointed to this seat as of 1 September 2021.

Mike Hodson resigned from his seat on 27 September 2021. Dave Gudge was appointed to take up this seat as of 28 September 2021.

The Chairman expressed his thanks to Martin Davidson and Mike Hodson for their service to the Trust on the Council of Governors and was delighted to welcome Jack Torr and Dave Gudge (previously a Somerset Partnership governor) to take up the vacant seats.

9. CHIEF EXECUTIVE UPDATE – GOVERNOR QUESTIONS

Peter Lewis reported that the Trust was under increasing pressure with demand significantly up compared to pre Covid-19. Significant numbers of people are presenting to the emergency department or seeking help at minor injuries units. The increase in demand is spread across most services and is putting extra pressure and demands on colleagues, all of whom have worked hard throughout the pandemic. There are also capacity issues in social care and intermediate

care services, resulting in difficulties discharging patients from the acute setting back into the community or to community hospitals. The Trust is working with Somerset County Council to review what steps can be taken to increase capacity.

The Trust is also endeavouring to work through the huge backlog of routine care needs accrued during the lockdown. Peter Lewis acknowledged the significant impact the long waits were having on patients and their families.

The Trust is awaiting guidance from NHS England/Improvement (NHSE/I) in relation to the financial allocation for the second half of the year (from 1 October). Peter Lewis acknowledged the support the NHS had received to deal with the financial challenges of the pandemic, which are still ongoing. He stated that the intention is to keep waiting lists steady (not increasing from where they are) and that a lot of effort is going into creating extra capacity to address the waiting list issue alongside dealing with the pressures in urgent and emergency care.

Jeanette Keech raised a question about how the Trust was working alongside primary care, especially as many patients report difficulties in getting appointments with the GP. Peter Lewis stated that primary care is also under pressure due to capacity issues, including vacancies within the practices and the difficulties recruiting partners. He reported that Andy Heron is working very closely with specific primary care networks to try and support them. Some Trust colleagues are supporting primary care services to help them respond to the demands. He acknowledged that if the primary care demands are not met there will be knock-on effects elsewhere within the system. Colin Drummond suggested that governors might find it helpful to have more understanding in respect to the Symphony practices connected to Yeovil District Hospital.

ACTION: AH/Governor Development Session.

Owen Howell raised concerns about the major systemic issues in mental health and adult social care and asked what plans are in place to address these. In response Peter Lewis stated that the Trust is working with Somerset County Council in respect to adult social care by giving support to supplement capacity on a short-term basis. Underpinning this is the question of how to raise a workforce in social care that is sustainable and sufficient. Recruitment and retention are also experienced across the acute and mental health sectors. The pandemic had highlighted what an important group domiciliary care workers are. In respect to the general pressure impacting mental health, he said that there is more that can be done to improve how the sectors work together and the timeliness of how people are moved through the system.

Sumitar Young enquired about the wellbeing of staff due to the pressures over the last 18 months. Peter Lewis acknowledged that this is a great concern and confirmed that colleagues are supported individually and in teams but noted that management are regularly discussing how to support staff as the pressure is relentless. He also stated that getting extra support from nursing agencies was a lot more difficult than it was before.

10. AUDITORS' REPORT ON THE 2020/21 ANNUAL ACCOUNTS AND ANNUAL REPORTS

In attendance: Jonathan Brown, Director, Public Sector Audit and Assurance, and Duncan Laird, Audit Manager, KPMG

Duncan Laird presented the work KPMG had undertaken on reviewing the annual reports and accounts and reminded the Council of the management's responsibility to manage and safeguard the Trust's resources and to ensure that there are adequate systems and controls in place to provide reasonable assurance on the financial accounts and the quality report. He explained the auditor's responsibility to provide an independent opinion on whether the Trust's accounts present a true and fair view of the state of affairs of the Trust and to consider whether the Trust has made proper arrangements for securing economy, efficiency and effectiveness and value for money in its use of resources.

The following highlights from the audit were noted:

- Audits were completed in line with the plan, which was updated slightly due to the funding regime for Covid-19 and the move to block contracts.
- 2020/21 was the first-year post-merger.
- For the second year running it had not been a requirement to test some of the performance indicators on the quality accounts due to restrictions imposed by Covid-19. In future it will be optional for trusts to appoint auditors to do that work, which will mean that this work will be undertaken by internal auditors instead.
- No significant issues were found during the audit, but six recommendations in respect to process points were noted for improvement, mainly in HR and payroll. This was not surprising considering the Trust has been through a merger.

Areas of focus for the audit in respect to the Financial Statements included:

- Valuation of land and building
- Revenue recognition, including fraud
- Non-pay expenditure
- Management override of controls.

Focus areas for the use of resources were:

- Financial arrangements
- CQC findings
- View of NHS Improvement
- Internal audit reports

Duncan Laird stated that the scope for the audit on 'value for money' was significantly enhanced this year. As a result, a public facing commentary report has been produced listing KPMG's conclusions and findings for this area. The audit confirmed that the appropriate arrangements are in place. KPMG reported that what they found in the audit was consistent with previous years and that they didn't identify any significant weaknesses to the trust's arrangements.

An unqualified opinion on the financial statements was confirmed.

Although the audit opinion does not cover the annual report, the external auditors do have a responsibility to make sure that the wording of the report is fair and balanced, along with a review of the annual governance statement. Duncan Laird confirmed that there were no issues raised.

In respect to the future, Duncan Laird highlighted the development of the Integrated Care System and the awaited guidance on future government funding and how that will drive elective recovery performance.

Following the presentation, the following questions were raised:

Jeanette Keech enquired how the auditors felt the merger had gone? In response Duncan Laird stated that considering it is not easy bringing two sets of different processes together, he felt it went very well and confirmed that there was nothing that hindered their audit work because of the merger.

Ian Aldridge commented about how the success of a company is viewed by the audit of accounts being assessed on a 'Going Concern' basis, and how that compares to NHS organisations. In response Duncan Laird confirmed that they do have to consider the going concern of an organisation, although in an NHS context fundamentally the government would step in if there were any significant concerns. Even so, auditors do have to make sure that they are satisfied that the Trust could stand on its own two feet in terms of managing its cash flow, keeping control of costs and was spending within its means. Duncan stated that they do consider 'going concern' from that perspective and that on reviewing the Trust's future forecasts, no cause of concern had been identified.

Ian Aldridge commented that, even though from a healthcare point of view not everything is right, it is going in the right direction. On behalf of the governors, he asked that a vote of thanks to the executive team be noted in the minutes and stated that as a body the COG are pleased and recognise the success of the management of the Trust.

Proposer: Ian Aldridge, Seconder: Jeanette Keech.

Colin Drummond thanked KPMG for their usual thoroughness and planning of the process and commended Pippa Moger and her team for all the hard work undertaken to produce the accounts.

11. 2020/21 ANNUAL ACCOUNTS AND ANNUAL REPORT

KPMG were in attendance for this item

Annual Accounts 2020/21

Pippa Moger reminded the Council that the Trust has to go through a prescriptive process in terms of preparing the accounts in accordance with the International Financial Reporting Standards and to adhere to the Financial Reporting Manual which is published annually by the Department of Health and Social Care which sets out the process to be followed.

Pippa Moger thanked KPMG for their auditors' opinion on the financial statements and acknowledged the hard work of the Trust's finance team, particularly following the merger, plus the change in the financial regime due to Covid-19.

She highlighted the following points from her presentation before opening the meeting to questions on the accounts:

Income:

- c.£611m – the majority coming from the Commissioners (Somerset CCG and NHS England/Improvement for specialist services).
- £47m - Covid-19 related expenditure
- £19m - education and training of staff.

Expenditure (embedded in a lot of the categories was spend associated with Covid-10):

- £409.9m – Colleague costs (including £26m in additional spend due to Covid-19 to cover additional capacity requirements around the organisation) and the set-up of the mass vaccination programme (£3m). This figure did not include GP and pharmacy costs.
- £53m – extensive capital programme, including backlog maintenance across all sites, plus the work on the new surgical centre on the Musgrove site.
- £2.2m – capital allocation from the Department of Health and Social Care under the Adapt and Adopt scheme helped to purchase additional endoscopy equipment to support the elective recovery programme.

Headline figures for the annual accounts were:

- Retained operational surplus (excluding reversal of impairment) –£0.9m (Annual Accounts £118m –due to merger accounting treatment and impairment)
- Generated efficiency savings of £4.6m
- Cash balances in the bank £75m
- Non-current assets valued at £309m

Heather Shearer asked what a £4.5m capital spend was for? Pippa Moger advised that the Beacon Centre was financed through PFI for which the Trust pays annual charges. This forms part of the capital programme.

Erica Adams enquired how the new Rutherford Diagnostic Centre will be funded? Pippa Moger advised that Rutherford has leased or bought the building whilst the Trust pays them for delivering the activity. The arrangements are no different to any other contract with private providers. The Trust works closely with Rutherfords to staff the unit. Phil Hodgson commented that he was aware that the Trust will utilise other space in that facility in the future and noted that the Trust also leases space at County Hall in Taunton and questioned whether it was a large amount when taking into account the financial statements? Pippa Moger confirmed that the Trust started leasing an area at County Hall in November 2020 and that this is covered in the accounts to March 2021. A charge for space at the Rutherford Diagnostic Centre and County Hall will be included in the 2021/22 accounts. To support this Pippa Moger reminded the meeting that the Trust rents other areas too, e.g. Glanville House and in Bridgwater.

Jeanette Keech commented on the £4.6m savings and asked if this arose out of the reduction in services due to the impact of Covid-19? In response, Pippa Moger stated that this included a non-pay underspend due to Covid-19 (i.e. hips and knee operations). Also included in that figure would have been the result of looking at different ways of delivering services.

Ian Aldridge commented on the £13.3m against clinical negligence and asked if this figure represented the cost of the insurance policy or claims against the Trust? Pippa Moger confirmed that this is the payment to NHS Resolution who manage the claims for all NHS organisations.

Rod Williams asked how the Trust invests the surplus it has in the bank, i.e. is it invested to earn interest? Pippa Moger responded that the NHS is not allowed to invest any of the money it is given. The money can be accessed through the government's banking service, which has very different rules to local authorities.

Tim Slattery enquired what £1.8m donation represented in capital expenditure? Pippa Moger advised that this covered donated assets, i.e. equipment donated by the League of Friends. The Trust also received ventilators and radiology equipment donated by the Department of Health and Social Care, which is covered in this section.

Following the discussion, the COG acknowledged that they were happy to **receive** the annual accounts 2020/21.

Annual Report 2020/21

Phil Brice reported that this year's annual report covered the first year of the merged trust and acknowledged that it had been a challenging year in the context of the pandemic, the vaccination programme and the merger.

The report acknowledges the innovation and resilience of the staff and teams throughout the organisation and recognises how despite the challenges the organisation was able to stand up and adapt services in urgent care, mental health, district, nursing and community services. Core governance and corporate functions also developed as part of the merger process. Phil Brice acknowledged the impact Covid-19 had on waiting times and referral / presentation levels which is reflected in the position the Trust is currently seeing. He also acknowledged the tremendous work of volunteers, governors, Leagues of Friends and all other external agencies that supported the Trust.

The annual report, along with the annual accounts, was laid before Parliament in June and is now published on the Trust's website.

12. 2020/21 QUALITY REPORT/ QUALITY ACCOUNT

Phil Brice reminded the meeting that for the second year the Quality Report and Quality Account was not included as part of the Annual Report and Accounts due to the relaxation of some of the governance processes due to Covid-19. He acknowledged that the Quality Account and Quality Report has a prescribed format and structure in terms of what has to be included. Its intention is to focus on quality improvement across patient safety, clinical effectiveness and patient experience. Each year a set of quality improvements are agreed amongst the executive team following discussion with members of the Board, colleagues across the organisation and wider stakeholders, including Healthwatch.

Governors are also consulted through the Quality and Patient Experience Group. The two organisations last year agreed on a clinical strategy and a set of strategic objectives which formed the basis of the quality account priorities. These were rolled over into 2020/21 to support the flagship programmes set out in the report.

Despite the challenges experienced by the organisation in 2020/21, Phil Brice confirmed that really good progress has been made. The Quality Improvement Priorities are monitored through the Quality and Governance Committee and the Quality and Patient Experience Group. In particular, he highlighted the work behind the transformative arrangements within the mental health services, including the introduction of the open mental health response which resulted in the Trust being nominated in the HSJ's Mental Health Trust of the Year awards.

The Covid-19 pandemic has held back some of the work on the priorities this year but acknowledged that the report reflects some of the significant achievements that teams have done in those areas, although it has not been possible to evidence this work in the way it would normally be done in these reports.

The report has been published on the websites of NHS Choice and the Trust. Phil Brice thanked the Governor and Membership Support Officer for her work in pulling the report together and Melanie Devine (public governor) for proofreading the document.

Colin Drummond expressed thanks to Phil Brice for his clear report and to governors for their input into the Quality Account.

Owen Howell, staff governor, acknowledged the great initiatives in mental health services but raised a question about what liaison was being undertaken with the commissioners as the service is underfunded and asked how the gap was to be bridged, particularly in respect to the 'Stolen Years' quality improvement priority? He also noted that some clients had not been able to access some of the excellent services that have been created. In acknowledging the concern Phil Brice stated that a significant amount of investment had been made over the last year to improve the situation enabling more patients to access outreach services. He confirmed that the Trust is in constant discussion with the commissioners as to how the shortfall is to be addressed. It is hoped that the new integrated care system structure would help as The Trust will have a seat on the ICB board, alongside the commissioners, which will give the Trust a greater voice. Andy Heron also acknowledged Owen Howell's concern and suggested that this was a discussion which could be picked up internally with colleagues to define the priorities for the service.

Ian Aldridge asked the staff governors whether they felt listened to regarding sharing their views on what the priorities should be? Owen Howell responded that they recognised that there are a lot of competing priorities, but that generally he believed that staff are listened to and key issues are met. Other staff governors supported this view.

Jeanette Keech pointed out that many members of the public are not aware of what is going on in the health sector and questioned whether enough information is being communicated? Peter Lewis acknowledged that there was a

need to have more engagement with the public, but that that the priority must be solving the problems the organisation is facing. Matthew Bryant stated that strategically the public need to be made aware that the model of care in Somerset is based on a move away from bed-based to community-based care.

Colin Drummond thanked Phil Brice for the report. The Council of Governors acknowledged that they were happy to receive the Quality Report.

13. PERFORMANCE REPORT FROM THE BOARD OF DIRECTORS QUESTIONS FOR THE BOARD OF DIRECTORS

The performance powerpoint slides were circulated with the meeting papers and can be viewed on the Trust's website. In view of this Pippa Moger did not go through the slides but highlighted that the slides demonstrated the position at Month 4. At this point the Trust had not received the planning guidance covering the period October 2021 to March 2022) from the Department of Health (it was due today). In respect to the first half of the financial year, the Trust was in a strong position and is on target to break even.

The money received for the Elective Recovery Fund has allowed investment in more schemes and enabled forward thinking to look at other projects which will increase patient throughput. The limitations on spending the money available are capacity, theatre space and colleague resource.

There being no questions from the governors, Colin Drummond thanked Pippa Moger for her clear report.

14. TO RECEIVE AN UPDATE ON THE PROGRESS OF DISCUSSION WITH YEOVIL DISTRICT HOSPITAL

The powerpoint slides for this item were circulated with the meeting papers and can be viewed on the Trust's website. In view of this David Shannon did not present the slides at the meeting but highlighted key points.

The due diligence process is underway. The timelines have been adjusted to allow colleagues to have more time to do a thorough and robust job. This work will be concluded by mid-November 2022 at which point there will be a due diligence review involving Senior Responsible Officers, non-executive directors and Deloitte and feedback to both Somerset FT and Yeovil District Hospital Council of Governors. Legal due diligence is being carried out separately by Bevan Brittan.

At the last joint governor session, the governors received an update on the benefits of the merger and the implication of the changes in models of care.

The patient benefits case will set out the general impact on patients of the merger. It will use 6-8 individual clinical services as case studies to illustrate the detailed changes that are planned and the associated impact on patients and their families and carers. This work will be completed by Christmas with the results worked into the business case and then be brought back to future joint working groups.

David Shannon reminded the meeting that following the decision to move back the timeline for the completion of the business case it is now looking to be

completed in May 2022. This will trigger external review by NHS England/Improvement followed by the vote by the Council of Governors in Autumn 2022.

The Chairman thanked David Shannon and Victoria Keilthy for the way they are taking the trusts through a complicated process and noted that future joint meetings with Yeovil District Hospital governors are planned.

Good progress is being made on the development of the joint constitution for the merged organisation which is covered in item 15 on the agenda.

15. TO APPROVE A CHANGE TO THE COMPOSITION OF THE COUNCIL OF GOVERNORS

The Chairman reminded the governors that the legal process for the merger with Yeovil District Hospital is the same as that applied to the merger between Taunton and Somerset and Somerset Partnership NHS Foundation Trusts in 2020. He affirmed the intention to make it as easy as possible for existing Yeovil governors so stand for election to the council of governors following the merger.

Ria Zandvliet reminded the meeting of the work undertaken by the Constitution Review Group in preparation for the new Constitution, which will be brought to the Council for approval at the December 2021 meeting. The Constitution includes proposals to change the number of public governor seats in some of the constituencies from the date of the merger. However, in view of the change in the merger date from 1 April 2022 to 1 October 2022, it is proposed to implement the changes from 1 May 2022, which coincides with the date of the next scheduled public elections. Further changes are proposed from 1 May 2023.

Ria Zandvliet outlined the proposed changes to all constituencies as detailed in her report, which includes the establishment of a new Dorset Public governor seat.

In response to questions about the number of appointed governors, Ria Zandvliet confirmed that the report only referred to the proposed changes to the appointed governor seats. The Somerset CCG and University representative seats will remain unchanged.

Comment was made about the impact of the new unitary council when it comes into being and how that would affect the constituencies. It was noted that the shadow unitary council will be in place by April 2022, but Ria Zandvliet stated that the Trust cannot pre-empt any changes the unitary council may bring, but that the Trust will respond when it becomes clear.

The Council commended the work which the Constitution Review Group had undertaken and **approved** the recommendation.

Proposer: Phil Hodgson, Seconder: Caroline Toll.

16. APPOINTMENT OF A JOINT NON-EXECUTIVE DIRECTOR

Further to the Memorandum of Understanding with Yeovil District Hospital (YDH) in relation to working towards the development of a single provider legal entity

and the move towards a Joint Management Team, the report presented to the Council by Ian Hawkins (Lead Governor) outlined the process to appoint a Joint Non-Executive Director to Somerset FT's Board.

Based on the principles of the re-appointment process as set out in the Constitution, the Nomination and Remuneration Committee has considered the appointment and recommends that the Council of Governors approve the appointment of Martyn Scrivens as the Joint Non-Executive Director as of 1 October 2021. This appointment will be as an Associate Non-Executive Director (non-voting) from 1 October to 31 October 2021 and as a Non-Executive Director (voting) from 1 November 2021.

A similar paper will be presented to the YDH COG covering the proposed appointment of Jan Hull as a Joint Non-Executive Director on the YDH Board.

Following a clarification on a point raised by Jeanette Keech on remuneration the Council of Governors **approved** the appointment as set out in the report and the additional £3,000 to be paid to the respective joint Non-Executive Directors.

17. FEEDBACK FROM:

a) Nomination and Remuneration Committee

The report from the Nomination and Remuneration Committee meeting held on 15 September 2021 was noted.

b) Quality and Patient Experience Group

Council received the annual review of the work of the Quality and Patient Experience Group for 2020/21. The report from the Quality and Patient Experience Group meeting held on 3 August 2021 was noted.

Judith Goodchild (Chair) stated that governors appreciated all the information that they are given over the year, which enabled them to give an accurate report to members of the public.

Colin Drummond thanked Judith Goodchild for her reports and work as Chair of the group.

c) People Group

Council received the annual review of the work of the People Group for 2020/21. The report from the People Group meeting held on 5 August 2021 was noted.

Lynn Pearson (Chair) stated that it had been a privilege to chair the group during the year.

Colin Drummond thanked Lynn Pearson for her reports and work as Chair of the group.

d) Strategy and Planning Group

Council received the annual review of the work of the Strategy and Planning Group. The report from the Joint Strategy and Planning Group meeting held on 4 August 2021 was noted.

Paul Aldwinckle (Chair) stated that it had been a privilege to chair and work with everyone in the Group.

Colin Drummond thanked Paul Aldwinckle for his reports and work as Chair of the group.

e) Staff Governors

No update was received.

18. ANY OTHER BUSINESS

Ian Hawkins voiced a note of thanks on behalf of the Council of Governors to all colleagues in the Trust. He stated that the Trust has emerged from a very difficult year and that he hears far more praises for the staff of the Trust than complaints. He requested to record formally the appreciation of the Council for everything that everyone has done. 'You are wonderful people'.

Colin Drummond reminded the meeting that this was the last COG meeting at which Barbara Cliff, Non-Executive Director, would be attending. After seven years of service to Somerset Partnership and Somerset FT she was retiring at the end of October. Colin thanked her for invaluable support and said that she would be greatly missed.

Future agenda items for Council of Governors' meetings

Colin requested that any future agenda items should be fed through to Ria Zandvliet and suggested that it may be appropriate to talk about the situation on the GP front.

19. DATES OF NEXT MEETING

Formal Council of Governors meetings: The remaining dates for 2021/22 are confirmed as follows:

- Wednesday 15 December at 3.00 pm
- Wednesday 9 March 2022 at 2.00 pm

If a quorum is not present on the above dates (and for this meeting), the adjourned meeting will take place seven days after the above dates, at the same time and at a venue to be confirmed.

Wednesday 6 October
Wednesday 22 December
Wednesday 16 March

20. WITHDRAWAL OF PRESS AND PUBLIC

The Chairman moved that representatives of the press and other members of the public be excluded from the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest.

SOMERSET NHS FOUNDATION TRUST

**ACTION NOTES FROM THE PUBLIC COUNCIL OF GOVERNORS MEETING
HELD ON 29 SEPTEMBER 2021**

AGENDA ITEM	ACTION	BY WHOM	DUE DATE	PROGRESS
9.	CHIEF EXECUTIVE UPDATE <ul style="list-style-type: none">The Chairman suggested that governors might find it helpful to have more understanding in respect to the Symphony practices connected to Yeovil District Hospital.	AH		This item is to be followed-up at a future governor development session.

SOMERSET NHS FOUNDATION TRUST
COUNCIL OF GOVERNORS – DECLARATIONS OF INTEREST
AS AT DECEMBER 2021

1. PURPOSE

- 1.1 To present the updated overview of the Council of Governors' declarations of interest.

2. BACKGROUND

- 2.1 As required by the Regulatory Framework, Section 7 in the Council of Governors Standing Orders all governors are to declare any interests they may have outside of their role as a governor which may be relevant and material to the business of the Trust.
- 2.2 The attached report outlines the current interests declared by governors as at December 2021.

3. CHANGES NOTIFIED SINCE THE PREVIOUS COUNCIL OF GOVERNORS' MEETING

- 3.1 Those items which are newly declared are highlighted in red.
- 3.2 The Trust has been advised that the following interests are no longer relevant and have been removed from the register:
- *Rod Williams – Chairman of the South West Armed Forces Covenant Partnership*
 - *Jane Armstrong – Governor of West Somerset College*

4. RECOMMENDATION

- 4.1 The Council of Governors is asked to note the governors' declarations of interest.

SECRETARY TO THE TRUST

SOMERSET NHS FOUNDATION TRUST

DECLARATION OF COUNCIL OF GOVERNORS' INTERESTS

Governor	Constituency	Declaration of Interest (Financial and other interests)
Public Governors		
Mrs Erica Adams	Public - Somerset West and Taunton	<ol style="list-style-type: none"> 1. Secretary - Wellington Medical Centre Patient Participation Group 2. Chairman - Patient Transport Service – The Welly Hopper 3. Associate Member - Somerset Building Preservation Trust (previously Company Secretary, Administrator, Fund Raiser and Education Programme planner) 4. Visitor - Abbeyfield Taunton Society, Pollards Way, Taunton (previously Company Secretary and Administrator) 5. Digital Champion through Somerset CCG
Cllr Ian Aldridge	Public – Somerset West and Taunton	<ol style="list-style-type: none"> 1. District Councillor - Somerset West and Taunton Council and Williton Parish Council (Independent) 2. Member - Patient Participation Group at Williton Surgery
Dr Jane Armstrong	Public - Somerset West and Taunton	<ol style="list-style-type: none"> 1. Secretary - Patient Participation Group at West Somerset Health Care
Mr Paddy Ashe	Public – South Somerset	<ol style="list-style-type: none"> 1. Wife works at the Somerset Clinical Commissioning Group in children services.
Mr Richard Brown	Public – Mendip	<ol style="list-style-type: none"> 1. Director – The Willats Trust 2. Trustee – Westhay Village Hall 3. Volunteer - Somerset Youth Offending Team 4. Chaplain - RAF (AC) T. 914 Squadron
Mrs Kate Butler	Public – Somerset West and Taunton	<ol style="list-style-type: none"> 1. Member - Patient Participation Group at Williton Surgery 2. Trustee – Community Council Somerset
Mr Bob Champion	Public – Mendip	<ol style="list-style-type: none"> 1. Board Member and Volunteer - Healthwatch Somerset Board 2. Members - Carers Voice Somerset 3. Member - Carers UK 4. Member - Save Our Hospitals Group

Governor	Constituency	Declaration of Interest (Financial and other interests)
		Shepton Mallet 5. Lay Member - "Urgent and Emergency Care Services Clinical and Assurance Committee" with Somerset Clinical Commissioning Group 6. Eldest daughter works for Practice Plus Group 7. Full time carer for family member 8. Involved with Somerset, Wiltshire and Dorset CCGs and Somerset CC re funding 9. Town Councillor, Shepton Mallett 10. Member – Liberal Democrat Party
Mrs Judy Cottrell	Public – Somerset West and Taunton	None to be declared
Dr Melanie Devine	Public - Somerset West and Taunton	1. Volunteer – Musgrove Park Hospital Chaplaincy 2. Volunteer – Facilitator, The Reader Organisation 3. Daughter-in-law is Lead Orthoptist at Musgrove Park Hospital
Revd Stephen Fowler	Public – Mendip	1. Director - Churches Together in England 2. Director- Root Connecting CIC 3. Director – KeyRing Lettings CIC
Mrs Judith Goodchild	Public –Sedgemoor	1. Chair - Healthwatch Somerset and on their behalf sits on: <ul style="list-style-type: none"> - Health and Wellbeing Board - CCG Governing Body - Fit for My Future Programme Board - Primary Care Board (Joint Commissioning) - Somerset Engagement Advisory Group - Member - Shadow Integrated Care System Board 2. Trustee Bridge Academic Trust.
Mr Dave Gudge	Public Governor – Sedgemoor	1. Member – East Quay Medical Centre PPG
Mr Ian Hawkins	Public – South Somerset	2. Trustee - South Petherton League of Friends

Governor	Constituency	Declaration of Interest (Financial and other interests)
Dr Philip Jackson	Public – Mendip	<ol style="list-style-type: none"> 1. Member: Glastonbury Surgery PPG 2. Wife runs focus groups for MPH oncology as a volunteer and part of PEG
Mrs Jeanette Keech	Public – Somerset West and Taunton	<ol style="list-style-type: none"> 1. Trustee - Taunton Cider Charitable Trust 2. Member - Lyngford Park Surgery PPG
Mr Eddie Nicolas	Public – Sedgemoor	<ol style="list-style-type: none"> 1. Governor – Robert Blake Science College 2. Member – East Quay Medical Centre PPG 3. Member – Somerset Mental Health Stakeholders Engagement Forum 4. Member - Somerset NHS Citizens Panel
Mr Timothy Slattery	Public – Somerset West and Taunton	<ol style="list-style-type: none"> 1. Volunteer Presenter - Local Community Radio Station, Apple FM, which is located on the Musgrove Park Estate. 2. Volunteer Press Officer - Village Community Projects. 3. Member – Liberal Democrat Party
Mrs Sue Steele	Public – South Somerset	<ol style="list-style-type: none"> 1. Member – Conservative Party
Mr Jack Torr	Public - Sedgemoor	None to be declared
Mrs Sumitar Young	Public – Somerset West and Taunton	<ol style="list-style-type: none"> 1. Member - Somerset County Council School Admission Appeal Panel
Mrs Gillian Waldron	Public – South Somerset	<ol style="list-style-type: none"> 1. Lay Member - Palliative and End of Life Programme Group for Somerset. 2. Member – Martock and South Petherton PPG 3. Board Member – Healthwatch Somerset
Mrs Margaret Worth	Public – Somerset West and Taunton	None to be declared
Cllr Alan Peak	Public - Outside Somerset	<ol style="list-style-type: none"> 1. Member - Weston Town Council 2. Leader - Weston Town Council 3. Member - Labour Party
Staff Governors		
Mr Paul Aldwinckle	Staff	<ol style="list-style-type: none"> 1. Works in a private practice, Bristol 2. Chair – Bristol and District Branch of Royal College of Podiatry 3. Chair – South West Regional Branch of the Royal College of Podiatry

Governor	Constituency	Declaration of Interest (Financial and other interests)
Mr Manuel Blanco-Guzman	Staff	1. Private practice at Nuffield Hospital
Mr Phil Hodgson	Staff	1. Partner works as an HCA at Musgrove Park Hospital
Mr Owen Howell	Staff	1. Member - Labour Party and Momentum
Mrs Julie Jones	Staff	None to be declared
Ms Polly Maguire	Staff	None to be declared
Mr Julius Ndlovu	Staff	1. Partner works for Somerset County Council
Mrs Lynn Pearson	Staff	None to be declared 1.
Mr Neil Thomas	Staff	None to be declared
Mrs Julie Vale	Staff	1. Daughter is a Registered Nurse on Conservators Ward.
Appointed Members		
Vacancy	Somerset Clinical Commissioning Group	
Cllr Rod Williams	Somerset County Council	<ol style="list-style-type: none"> 1. Member – Conservative Party 2. Director SJM Training Consultants Ltd 3. Somerset County Councillor – in that capacity: <ul style="list-style-type: none"> • County Councillor for the Rowbarton and Staplegrove Division of Somerset County Council (SCC) • Chairman of the SCC Conservative Group • Chairman of the Somerset Armed Forces Covenant Partnership • Vice Chairman of the Heart of the South West Local Enterprise Partnership Scrutiny Committee • Vice Chairman of the SCC Childrens' and Families Services Scrutiny Committee • Member of the SCC Officer Appeals Committee • SCC Lead for The Somerset Wood • Member - Somerset Local Government Reorganisation (LGR) Advisory Board

		<ul style="list-style-type: none"> • Member – Somerset LGR Joint Scrutiny Committee
Ms Caroline Toll	Carers UK	<ol style="list-style-type: none"> 1. Member - Somerset Engagement Advisory Group of the CCG 2. Member - Frome Medical Practice PPG
Cllr Heather Shearer	District Councils	<ol style="list-style-type: none"> 1. Company Director - Quick Space Ltd 2. Councillor - Mendip District Council 3. Member - Street Parish Council 4. Chair - Police and Crime Panel (Avon and Somerset). 5. Chair – Safer Somerset Partnership 6. Chair – Mendip Health and Wellbeing Board
Mr Robert Cornes	Taunton Samaritans	None to be declared
Professor Jos Latour	Universities	<ol style="list-style-type: none"> 1. Professor in Clinical Nursing - University of Plymouth 2. Director of the professorial-led South West Clinical School located at Somerset Foundation NHS Trust
Vacancy	GP Board	
Vacancy	District Council	

SOMERSET NHS FOUNDATION TRUST

COUNCIL OF GOVERNORS – MEETING ATTENDANCE 2020/21

1. PURPOSE

- 1.1 To present the updated overview of Council of Governors' meeting attendance to the Council of Governors and to bring to the attention of the Council of Governors those Governors who have missed three consecutive meetings.

2. BACKGROUND

- 2.1 According to the Trust's Constitution – Annex 6 paragraph 1 - if a Governor fails to attend any meeting of the Council of Governors for three successive meetings of the Council of Governors, his/her tenure is to be immediately terminated by the Council of Governors unless the Council of Governors is satisfied that:
- the absence was due to reasonable cause, and;
 - that the Governor will be able to start attending meetings of the Council of Governors within such a period as it considers reasonable.
- 2.2 There is one instance of a failure by a Governor to attend three consecutive meetings to be brought to the attention of the Council of Governors. The reasons for the non-attendance are known and the Governor involved will be able to attend future meetings.

3. RECOMMENDATION

- 3.1 The Council of Governors is asked to note the overview of meeting attendance.

CHAIRMAN

**SOMERSET NHS FOUNDATION TRUST - GOVERNOR ATTENDANCE RECORD
AT COUNCIL OF GOVERNORS' MEETINGS**

Governor	Constituency	23 September 2020	10 December 2020	17 March 2021	16 June 2021	29 September 2021	Meetings	
							Possible	Actual
Erica Adams	Public –Somerset West and Taunton	√	√	√	√	√	5	5
Ian Aldridge	Public –Somerset West and Taunton	X*	√	X	√	√	5	3
Jane Armstrong	Public –Somerset West and Taunton	√	√	√	√	√	5	5
Paddy Ashe	Public – South Somerset	√	√	√	X	X	5	3
Richard Brown	Public – Mendip	√	√	√	√	√	5	5
Kate Butler	Public – Somerset West and Taunton	√	√	√	√	√	5	5
Bob Champion	Public – Mendip	√	√	√	√	√	5	5
Judy Cottrell	Public – Mendip	√	√	√	√	X	5	4
Melanie Devine	Public – Somerset West and Taunton	√	√	√	√	√	5	5
Stephen Fowler	Public – Mendip	X	X	√	X	√	5	2
Judith Goodchild	Public – Sedgemoor	√	√	√	√	√	5	5
Dave Gudge	Public – Sedgemoor					X	1	0
Ian Hawkins	Public – South Somerset	√	√	√	√	√	5	5
Philip Jackson	Public - Mendip	√	√	√	√	X	5	4
Jeanette Keech	Public –Somerset West and Taunton	√	√	X	√	√	5	4
Eddie Nicolas	Public - Sedgemoor	√	√	√	√	√	5	5
Alan Peak	Public – Outside Somerset	√	√	√	√	√	5	5
Timothy Slattery	Public – Somerset West and Taunton	√	√	√	X	√	5	4
Sue Steele	Public – South Somerset	√	√	√	√	√	5	5
Jack Torr	Public - Sedgemoor					X	1	0
Gillian Waldron	Public – South Somerset	√	√	√	√	√	5	5
Margaret Worth	Public –Somerset West and Taunton	√	√	√	√	√	5	5
Sumitar Young	Public – Somerset West and Taunton	√	√	√	√	√	5	5
Paul Aldwinckle	Staff	X	√	√	√	√	5	4

Governor	Constituency	23 September 2020	10 December 2020	17 March 2021	16 June 2021	29 September 2021	Meetings	
							Possible	Actual
Manuel Blanco-Guzman	Staff	√	√	√	√	√	5	5
Phil Hodgson	Staff	√	X	√	√	√	5	4
Owen Howell	Staff	√	X	X	√	√	5	3
Julie Jones	Staff	X*	√	X	X	X	5	1
Polly Maguire	Staff	√	√	√	X	√	5	4
Julius Ndlovu	Staff				√	X	2	1
Lynn Pearson	Staff	√	X	√	√	√	5	4
Neil Thomas	Staff	√	√	√	X	X	5	3
Julie Vale	Staff	√	√	√	√	X	5	4

* NB: This Governor was unable to access the virtual meeting due to technical problems.

SOMERSET NHS FOUNDATION TRUST
COUNCIL OF GOVERNORS – MEETING ATTENDANCE

Appointed Governors

Governor	Organisation	23 September 2020	10 December 2020	17 March 2021	16 June 2021	29 September 2021	Meetings	
							Possible	Actual
Dr Jayne Chidgey-Clark	Clinical Commissioning Group	X	√	√	√	X	5	3
Robert Cornes	Taunton Samaritans	√	√	√	√	√	5	5
Jos Latour	Universities	√	√	√	√	√	5	5
Cllr Heather Shearer	District Councils	√	√	√	√	√	5	5
Caroline Toll	Carers UK	√	√	√	√	√	5	5
Rod Williams	Somerset County Council	√	√	√	√	√	5	5

STATUTORY DUTIES OF GOVERNORS FOR 2020/21
(Progress on actions taken all relate to 2020/21 unless indicated otherwise)

Completed in year or currently underway		Action Taken	Action Completed?
Recruitment/appointment of Non-Executive Director	Review of the Non-Executive Director end of term dates for 2021.	A succession planning report was included on the agenda of the December 2020 meeting.	Completed
	Re-appointment of two Non-Executive Directors from 1 August 2020	The re-appointment of Jan Hull and Barbara Gregory were approved at the July 2020 meeting.	Completed
	Re-Appointment of 2 Non-Executive Directors from 29 May 2021.	The re-appointment of Kate Fallon and Stephen Harrison were approved at the December 2020 meeting.	Completed
	Appointment of a new Non-Executive Director	The recruitment process was approved at the December 2020 meeting and the appointment of Sue Banerjee was approved by email and ratified at the June 2021 Council of Governors meeting.	Completed.
	Appointment of a new Joint Non-Executive Director	A proposal to appoint a Joint Non-Executive Director with Yeovil District Hospital	Completed.

		was approved at the September 2021 Council of Governors meeting.	
Decide the terms and conditions of the Chairman and Non-Executive Directors	Annual remuneration review	The findings from a remuneration review were approved at July 2020 Council of Governors meeting.	Completed.
Consider the Annual Accounts and Annual Report		The 2020/21 Annual Accounts and Annual Report and external audit opinion were presented to the September 2021 Council of Governors meeting and to the September 2021 Annual Members meeting.	Completed.
Assist the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance		<p>Governors are involved in the annual planning process and attended the joint Board and Governors Away Day held on 3 December 2019 to discuss the priorities for 2020/21.</p> <p>Governors were also involved in the Quality Account priorities planning process for 2021/22 at the Board/Governors development session held on 1 December 2020 and</p>	Completed

		have been invited to join the December 2021 Board/ Governors Development session to be held on 8 December 2021.	
To hold the Non-Executive Directors, individually and collectively to account for the performance of the Board of Directors.		<p>Performance is discussed through a number of different ways:</p> <ul style="list-style-type: none"> • Governors Strategy and Planning Working Group; • Governors Quality and Patient Experience Group; • Governors People Group; • Governors' attendance to Public Board meetings; • circulation of the Trust's staff newsletters to Governors; • weekly Governor briefings; • report of the Board of Directors to the Council 	Ongoing

		<p>of Governors meetings;</p> <ul style="list-style-type: none"> • invitations for Governors to attend Board Committee and Governance Group meetings; • feedback by Non-Executive Directors to the Council of Governors meetings; • Non-Executive Director and Governor meetings; • availability of detailed finance and performance reports on the Trust's website. 	
<p>Represent the interests of the members of the Trust as a whole and the interests of the public.</p>		<p>The interests of members as a whole and the interests of the public are represented in a number of ways, including Governor attendance at non-Trust meetings, visits to Trust premises, participation in Patient Walkrounds, members' events, members' newsletter.</p> <p>Feedback from Governors is provided to the Council of</p>	<p>Ongoing</p>

		Governors or to the relevant Governor Groups on a regular basis.	
Agree with the Audit Committee the criteria for appointing, reappointing and removing external auditors following a written recommendation from the Audit Committee		<p>A joint tendering exercise is being undertaken during 2020 and the Council of Governors agreed the two Governors who will be part of the tender review panel at its September 2020 meeting. The Council of Governors also agreed to delegate the approval of the tender criteria to these two Governors.</p> <p>The approval of the external auditor was approved at the March 2021 meeting.</p>	Completed.
Appraisal process for Chairman and Non-Executive Directors		<p>The Council approved the 2020/21 appraisal process for both the Chairman and Non-Executive Directors at its September 2020 Council meeting.</p> <p>Feedback on the Non-Executive Directors appraisals for 2020/21 has been included on the agenda of the June 2021 meeting.</p>	<p>Completed</p> <p>Completed</p>

		A 360 degree feedback process for the Chairman has been undertaken and the outcome was presented to the June 2021 Council of Governors meeting.	Completed
To decide whether the Trust's private patient work would significantly interfere with the Trust's principal purpose.		This will be raised with the Council of Governors as and when required.	Ongoing
To approve any proposed increases in non-NHS income of 5% or more in any financial year.		The Trust does not anticipate a proposed increase in non-NHS income of 5% or more for the 2020/21 financial year.	Ongoing
To approve an application by the Trust to enter into a merger, acquisition, separation or dissolution.		Governors will be involved in an application to enter into a merger, acquisition, separation or dissolution. Feedback on the possible SFT/YDH merger will be provided to every Council meeting and additional briefing sessions will be set up as and when required.	Ongoing Ongoing
To approve a significant transaction.		The definition of a significant transaction was approved at the July 2013 Council of	Completed.

		<p>Governors meeting.</p> <p>A significant transaction was approved in 2019/20.</p>	
To approve proposed changes to the Constitution.		<p>The Constitution for the merged organisation was approved at the May 2019 meeting.</p> <p>The Constitution will be kept under review and changes proposed as and when required.</p> <p>A proposal to change the composition of the Council of Governors from 1 May 2022 was approved at the September 2021 Council meeting. The draft Constitution for the merged organisation has been included on the agenda of the December 2021 Council meeting.</p>	<p>Completed.</p> <p>Ongoing</p> <p>Completed.</p> <p>Ongoing</p>

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Performance and Finance: Report to the Council of Governors

outstanding care
listening and leading
working together

Andy Heron Chief Operating Officer
Mark Hocking, Deputy Director of Finance

Finance

Statement of Comprehensive Income	Current Month 7			Year to date		
	Plan £000	Actual £000	Fav./ (Adv.) Variance £000	Plan £000	Actual £000	Fav./ (Adv.) Variance £000
Income						
NHS clinical income	44,801	47,493	2,692	311,531	338,665	27,134
Non-NHS clinical income	222	103	(120)	1,805	1,521	(284)
Non-clinical income	3,896	3,947	51	25,636	32,881	7,245
Total operating income	48,919	51,542	2,623	338,972	373,067	34,095
Employee expenses	(35,690)	(34,549)	1,140	(230,406)	(248,579)	(18,173)
Drugs	(2,990)	(3,726)	(736)	(23,321)	(26,456)	(3,135)
Clinical Supplies	(2,110)	(3,077)	(967)	(18,459)	(17,993)	466
Non-clinical supplies	(5,863)	(7,560)	(1,697)	(48,564)	(61,096)	(12,531)
PFI expenses	(241)	(285)	(44)	(2,209)	(1,966)	243
Total operating expenses	(46,893)	(49,198)	(2,305)	(322,958)	(356,089)	(33,131)
EBITDA	2,026	2,344	318	16,014	16,978	964
Other income	61	13	(48)	157	450	293
Depreciation charges	(1,371)	(1,690)	(319)	(11,132)	(11,483)	(351)
PDC dividend expense	(476)	(613)	(137)	(3,789)	(3,926)	(137)
Other financing costs	(157)	(138)	18	(1,017)	(1,229)	(213)
Overall Surplus/(Deficit)	84	(84)	(167)	233	790	556
Adjustments to control total	(84)	84	167	(233)	(790)	(556)
Adjusted Financial Performance	0	0	0	0	(0)	(0)

In the month of October, the Trust recorded a breakeven position, which was in line with plan for the month; cumulatively the Trust has achieved a breakeven position in line with plan for the H2 period.

Finance – key headlines

- The financial plan for October – March (H2) is a breakeven position for the Trust and the Somerset system collectively. The H2 plan reflects the most recent planning guidance and financial envelope with uplifted block contracts remaining in place for the rest of the year;
- The Trust is continuing to oversee and support delivery of the Covid-19 mass vaccination and booster programme across Somerset. The financial arrangements for this are neutral for the Trust with all associated costs being reimbursed from central NHSE funds;
- The extreme pressure on services continues, requiring unprecedented levels of escalation capacity coupled with high levels of sickness and vacancies which are creating additional financial pressure;
- Additional funding has been included within H2 plans to support winter schemes and further non-recurrent system funding (Elective+) is currently being finalised to further support and protect delivery of elective capacity;
- The operational and financial pressures are expected to continue into and through winter. At this stage, it is expected these can be mitigated within the overall financial envelope for H2 and the additional resources the system is expecting to receive.

Quality and patient safety

Successes:

- We are continuing to maintain high levels of cleanliness across all of our wards.
- In October 2021, three patients were placed out of area for non-specialist mental health inpatient care, for a total of 41 days. At the time when the patients required admission, Holford ward was unable to accept them due to clinical and patient safety considerations. Two patients have since returned to Somerset. We continue to have amongst the lowest rates of such placements nationally.
- We are maintaining high rates of screening patients for dementia during their stay in our acute wards (93.1% in October 2021).
- 98.7% of patients admitted to our community hospitals and mental health wards received a venous thromboembolism (VTE) risk assessment, and 95.4% of mental health inpatients received a physical health assessment within 48 hours of admission

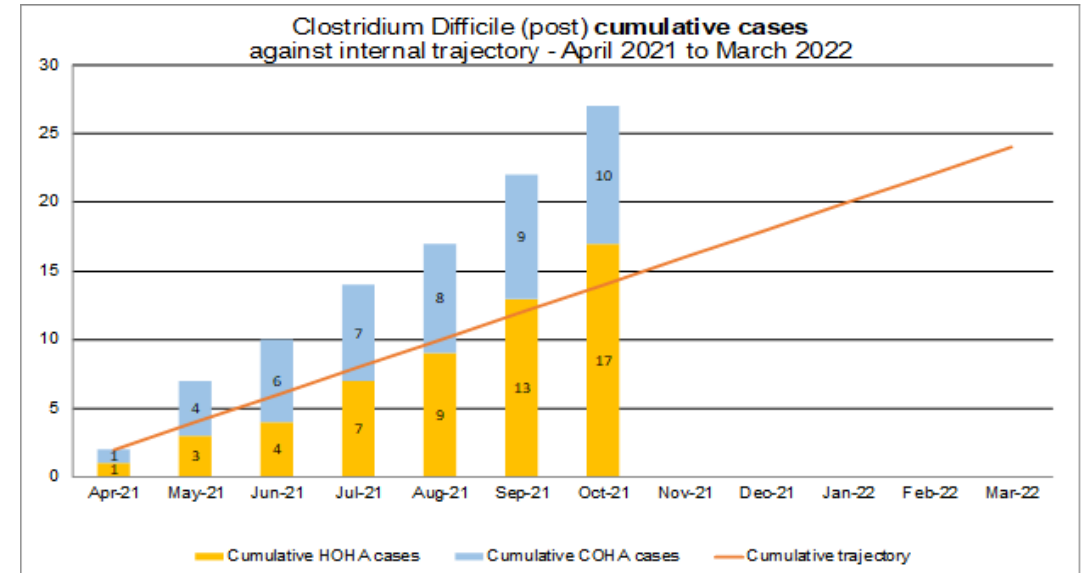
Cleanliness audit - wards	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21
Acute services	98.2%	98.0%	98.0%	97.2%	96.8%	97.3%
Community and mental health services	98.4%	98.4%	98.5%	98.3%	98.0%	98.3%

	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21
Patients screened for dementia during their stay - acute services	94.6%	93.1%	93.4%	93.0%	94.2%	93.1%
VTE risk assessment: community and mental health services	96.1%	99.0%	99.5%	96.9%	98.9%	98.7%
Mental health inpatients receiving a physical health assessment within 48 hours of admission	98.2%	98.1%	100.0%	96.6%	97.9%	95.4%

Quality and Patient safety

Areas for focus:

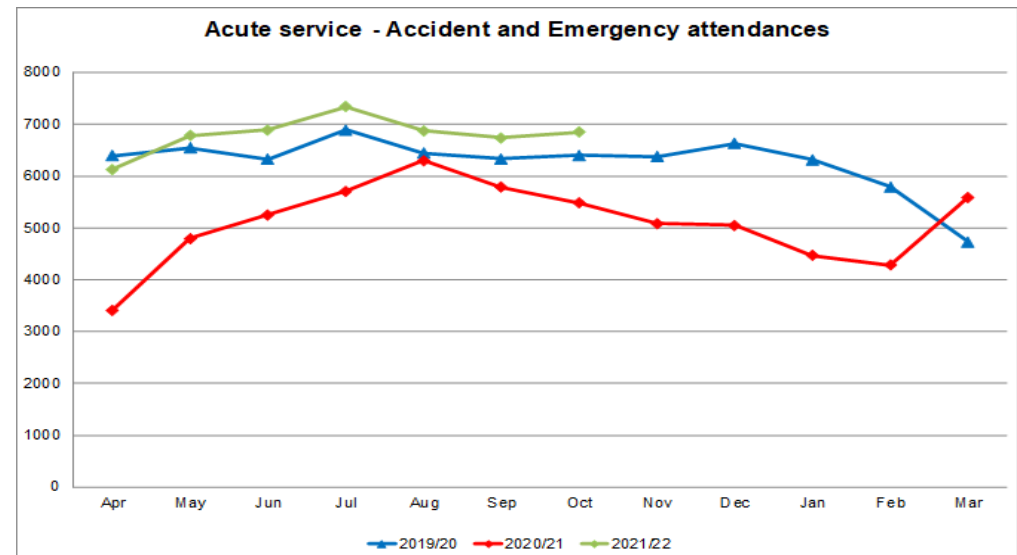
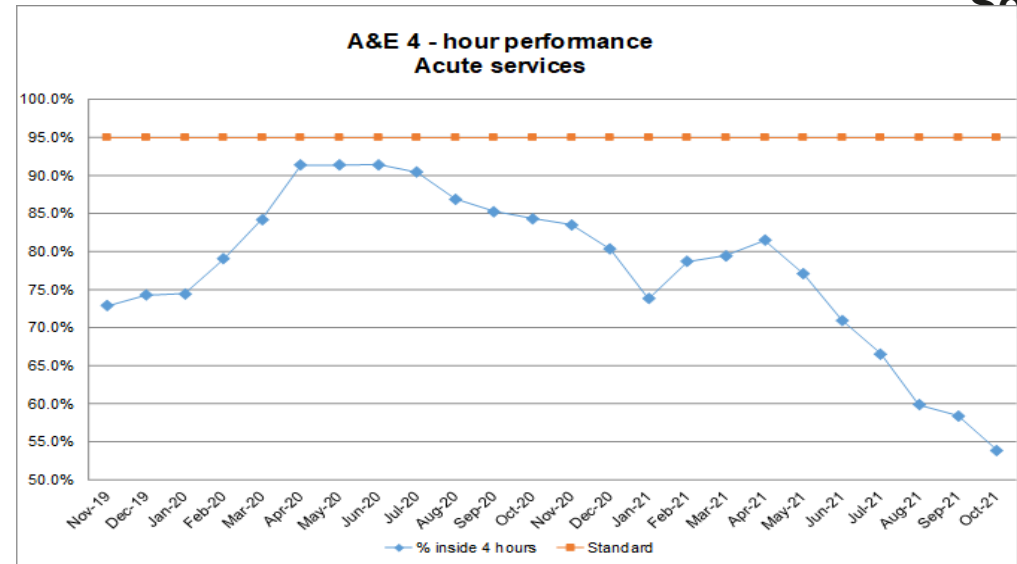
- Infection Control: there were five Trust-attributable C.diff cases in October 2021, bringing the cumulative total for the year to date to 27, which is above the threshold trajectory. To date, 22 reviews have been completed with lapses in care identified in seven, relating to antimicrobial prescribing, and standards not being met for hand hygiene and environmental cleanliness. The C. diff improvement group remains in place.
- VTE risk assessment – acute services: Performance declined in October 2021, to 88.6%, and remained below the 95% compliance standard. Work is progress to roll out a digital VTE form to improve the robustness of recording and increase compliance levels. The new form is currently being trialled by several wards. The VTE Group, chaired by a Consultant Haematologist, monitors performance and actions.



	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21
VTE risk assessment: acute services	93.6%	91.7%	92.9%	93.1%	90.2%	88.6%

Urgent Care

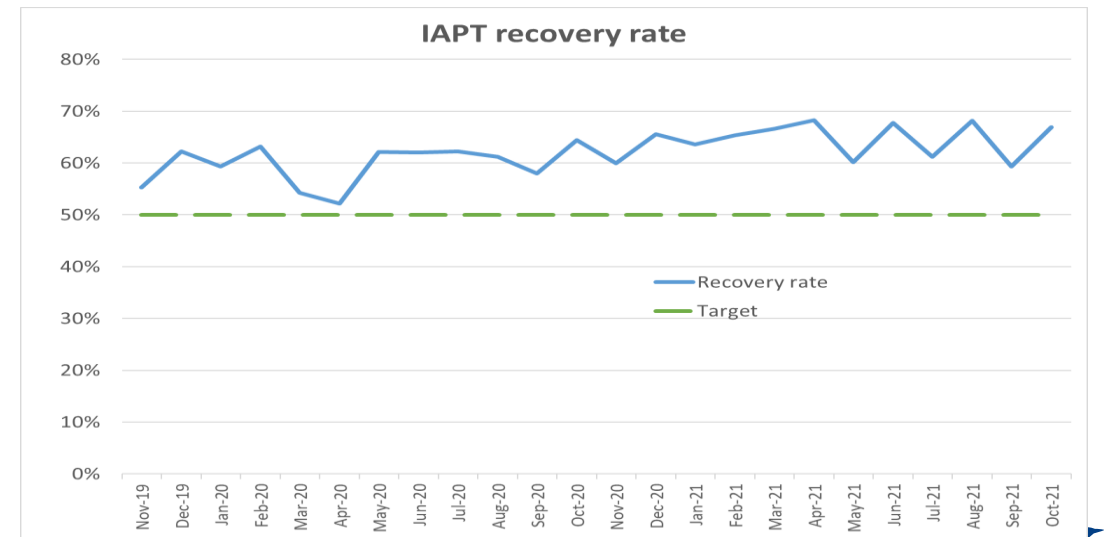
- Performance against the A&E 4-hour standard was 53.9% in October 2021, ranking us 87 out of 112 Trusts nationally. National average performance was 61.9%. With MIU activity included, we were ranked 27, with performance of 78.1%.
- Accident and Emergency remains very busy. During October 2021, attendances were 7% higher than levels seen in October 2019.
- Patients admitted to an inpatient bed are, on average, staying half a day longer. This is consistent with increasing patient acuity and a slowing of the rate of discharge due to capacity challenges in intermediate care.
- Patients continue to be triaged on arrival and continue to be segregated into COVID and non COVID areas within the department until a full clinical assessment has been completed.



Mental health

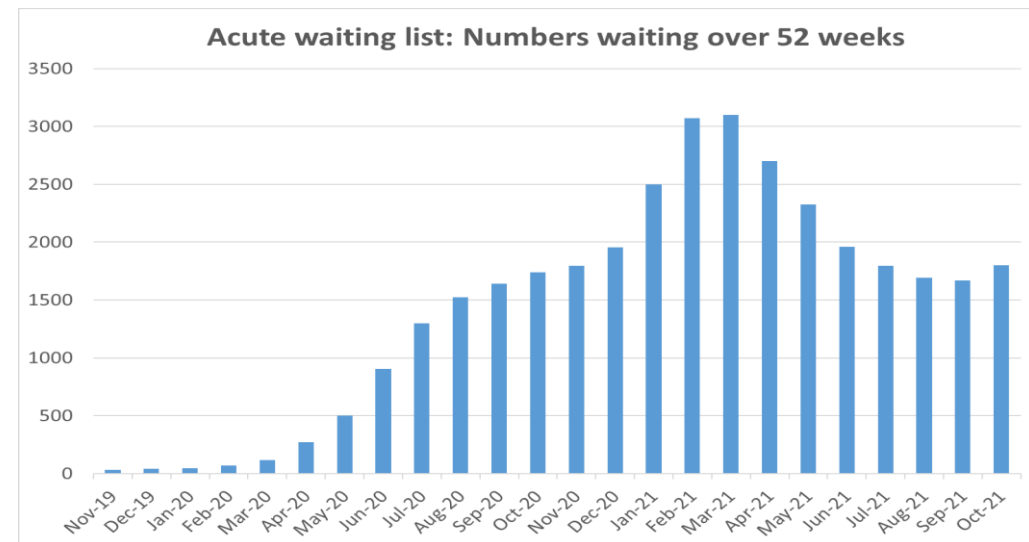
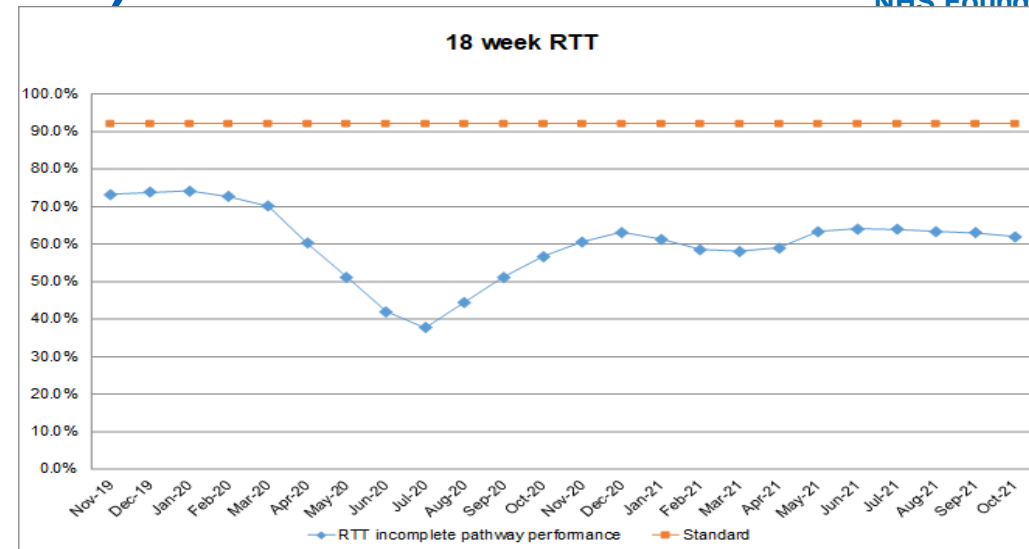
- The percentage of people waiting six weeks or less to be seen by our adult community mental health services was 93.4% in October 2021. All children and young people referred to Child and Adolescent Mental Health Services (CAMHS), and all people referred to our learning disabilities service for a first appointment had waited under six weeks. 92.5% of older people had waited six weeks or less for a first appointment.
- The percentage people with a first episode of psychosis beginning treatment with a NICE-recommended care package within two weeks of referral was 53.8% during the quarter ending 30 September 2021, below the 56% standard, due to delays in notifying the service of the presence of psychosis. The service manager has addressed this with the referring teams.
- Improving Access to Psychological Therapies (IAPT) recovery rates have remained higher than the 50% national standard. In August 2021, the latest data published, Somerset NHS Foundation Trust was the best-performing NHS provider nationally.

	May-21	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21
Adult mental health services	86.5%	90.0%	93.8%	90.3%	90.1%	93.4%
Older Persons mental health services	84.3%	93.3%	94.8%	92.9%	96.4%	92.5%
Learning disabilities service	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Children and young people's mental health services	98.6%	100.0%	97.7%	96.7%	97.3%	100.0%



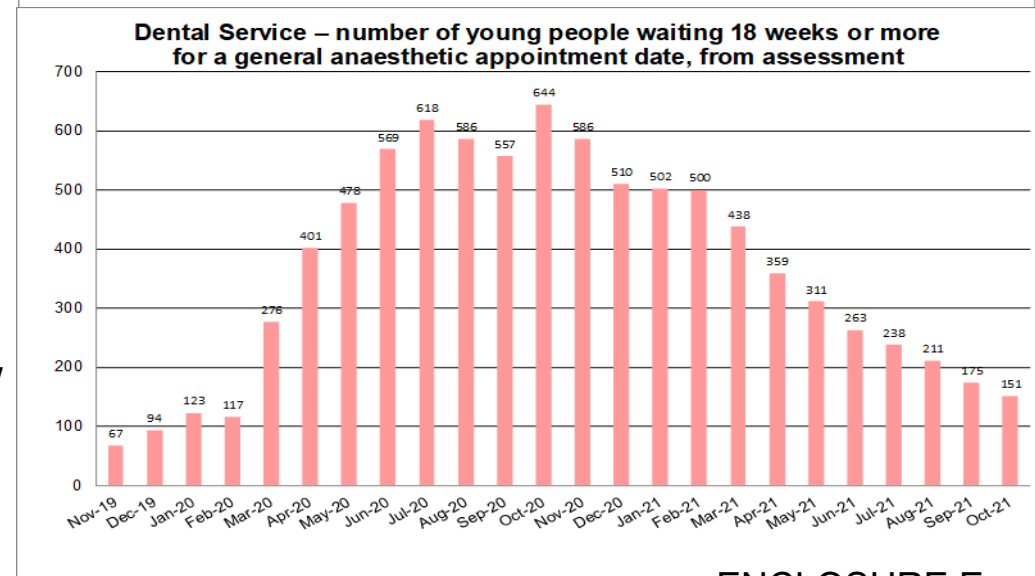
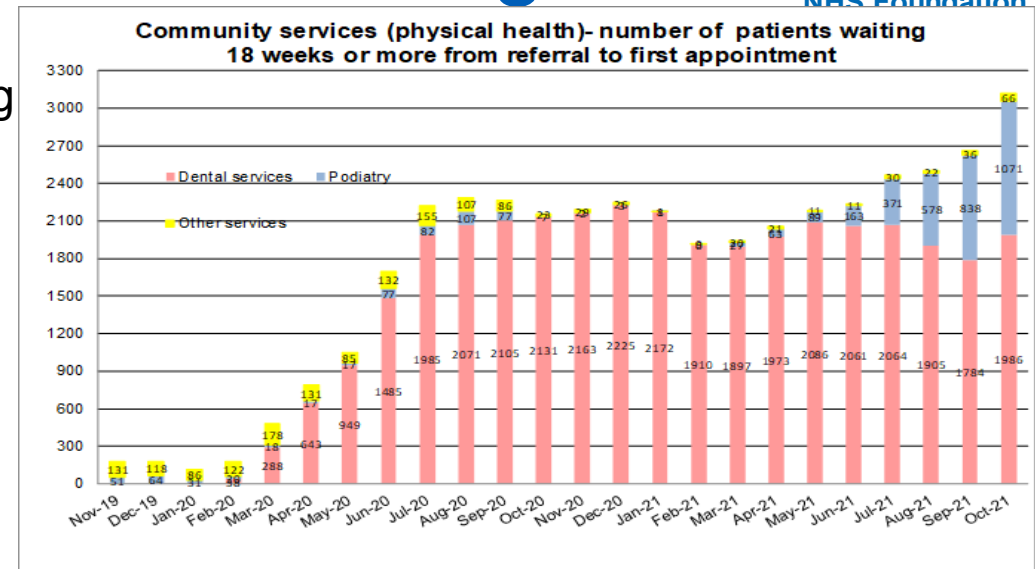
Referral to Treatment (RTT): acute services

- The percentage of patients waiting under 18 weeks from referral to treatment decreased slightly, from 63.0% in September 2021 to 61.9% in October 2021.
- The total waiting list size at the end of October 2021 was 32,302, up from 31,715 in September, but 40 below (i.e. better than) the target trajectory of 32,342.
- The number of 52-week waiters rose from 1,669 in September 2021 to 1,800 in October 2021, largely due to an increase in referrals a year ago. This is 51 patients above (i.e. worse than) trajectory, reflecting current bed pressures and cancellations.
- There is an active programme of system-wide actions to support long term recovery, which includes the shared use of capacity across the



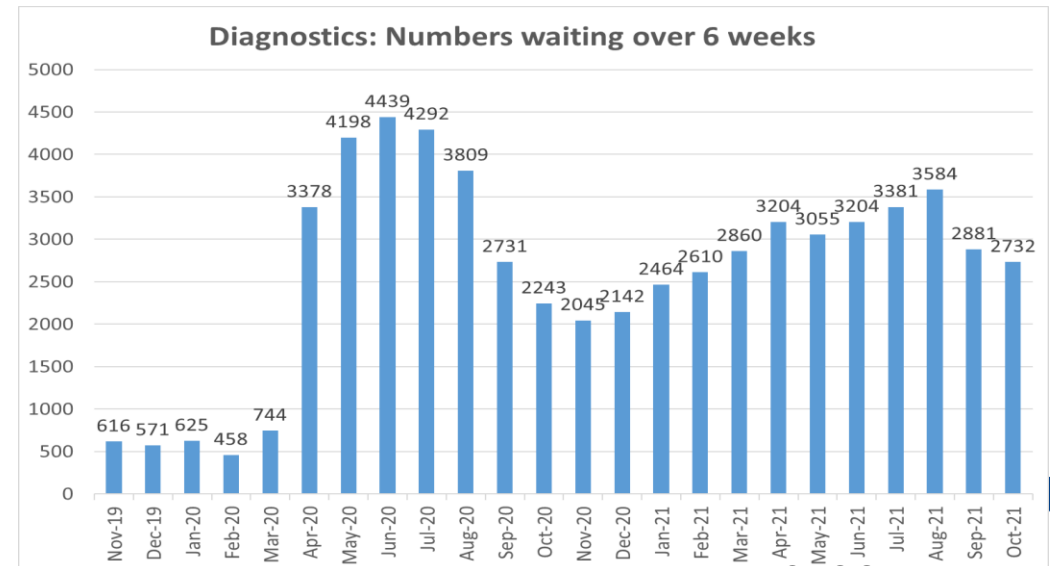
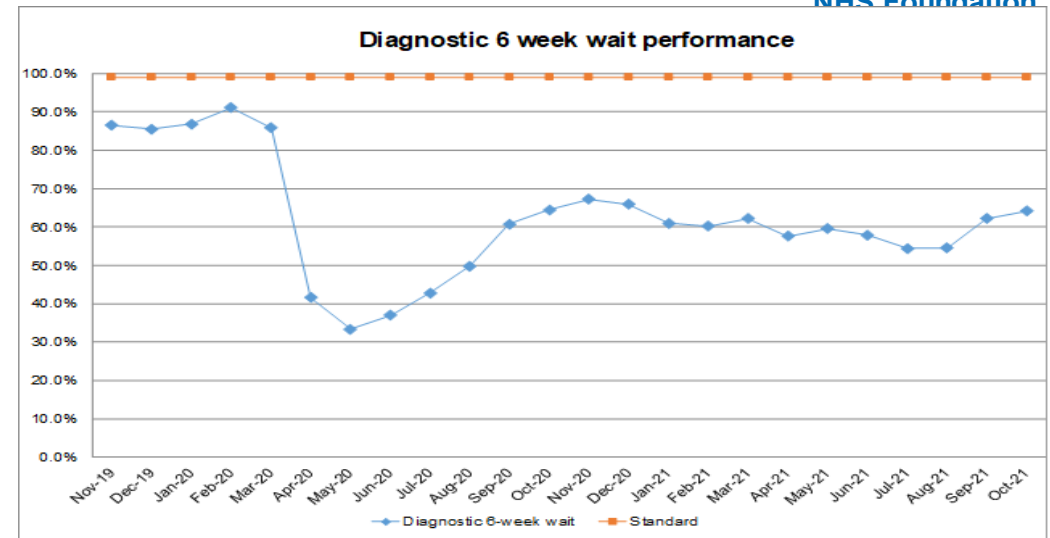
Community physical health services waiting times

- As at 31 October 2021, the number of patients waiting 18 weeks or more rose to 3,123, of whom 1,986 were waiting to be seen by our Somerset and Dorset dental service. The Podiatry service had the next highest number of patients waiting over 18 weeks, with 1,071. The Podiatry service has had significant levels of vacancies for a long time, and is prioritising high risk vascular / diabetic foot care and acute nail surgery cases. All routine podiatry patients have been contacted by letter and telephone call to provide support.
- The number of Somerset and Dorset children waiting 18 weeks or more for an appointment for treatment involving a general anaesthetic (GA) fell from 175 in September to 151 at the end of October, the twelfth month in a row that the numbers fell.
- Dental work is now being undertaken in all locations across Somerset and Dorset. Activity levels remain below pre-COVID levels, due to a number of factors including the need for air exchange in all clinical rooms, affecting the length of time between appointments.



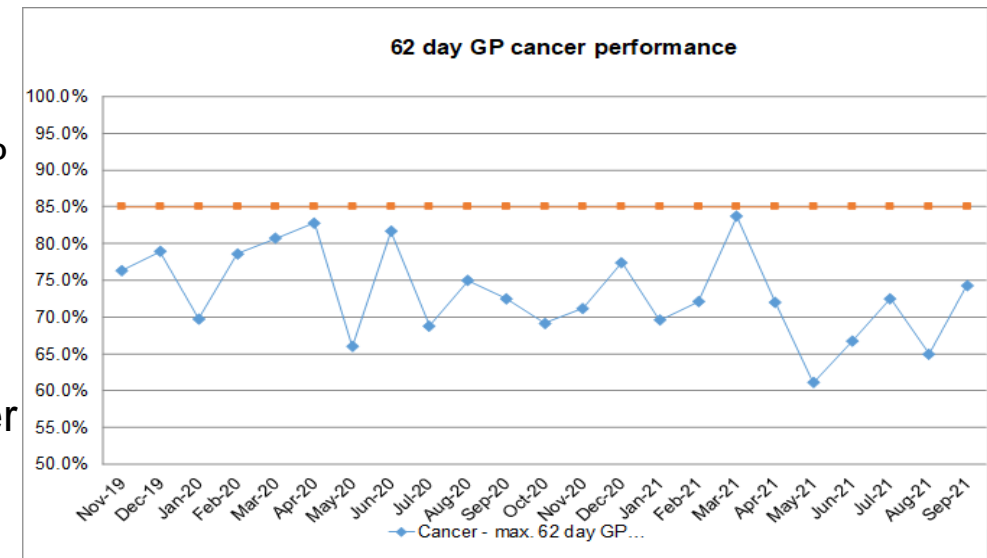
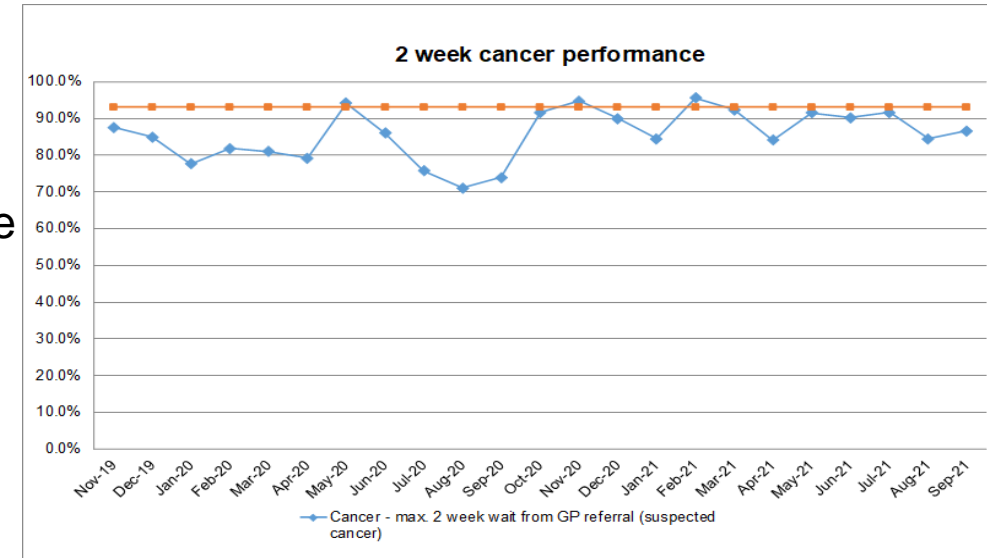
Diagnostics

- The percentage of patients waiting under 6 weeks for a diagnostic test rose from 62.2% in September 2021 to 64.2% in October 2021. The number of patients waiting under 6 weeks grew from 4,746 in September to 4,905 as at 31 October 2021.
- The number of patients waiting over 6 weeks as at 31 October 2021 was 2,732, down from 2,881 as at 30 September 2021; the highest numbers of patients were waiting for echo (down from 1,831 to 1,716) followed by MRI (down from 814 to 637), together making up 86% of all the long waiters.
- The total waiting list size list was almost unchanged at 7,637 in October 2021, compared to 7,627 in September 2021.
- Additional MRI capacity is now being utilised at a local Independent Sector provider, and the Rutherford Diagnostic Centre in Taunton opened in September 2021, providing additional static CT and MRI scanners. 5.4 whole time equivalent (WTE) echo



Cancer waiting times

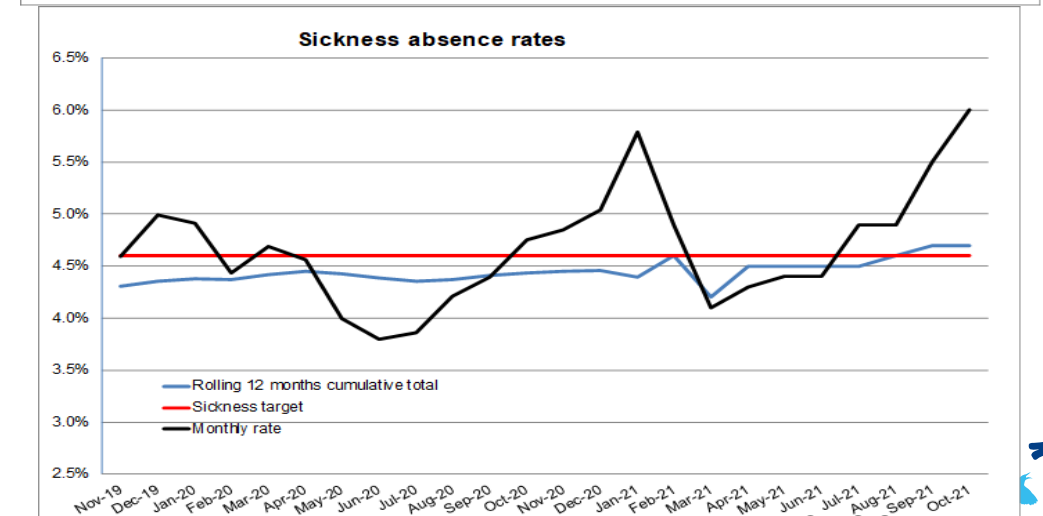
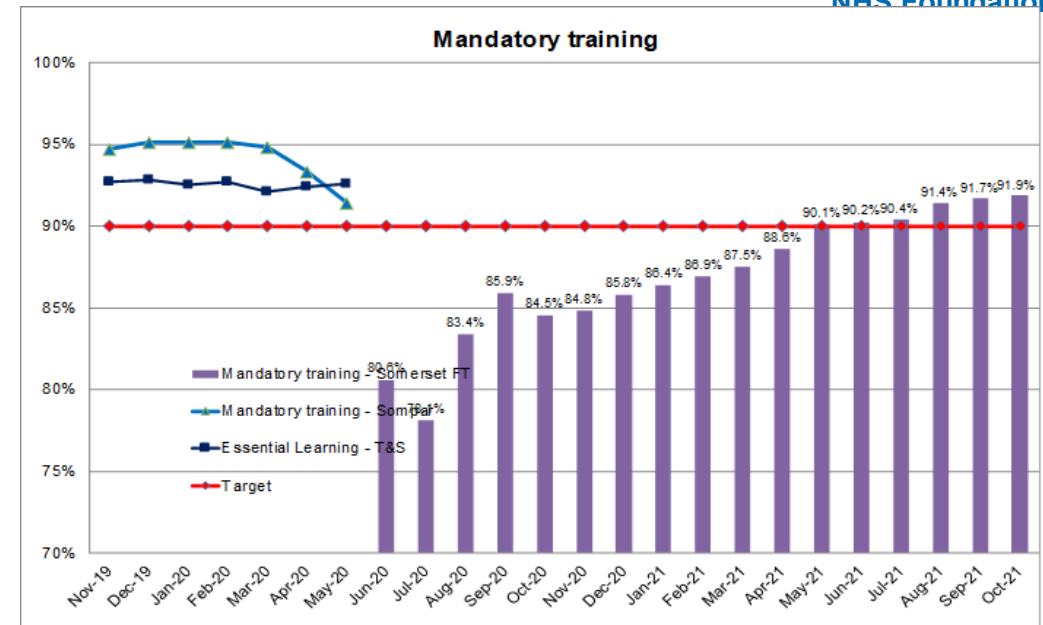
- The percentage of patients seen within 14 days of referral by their GP with a suspected cancer increased from 84.4% in August 2021 to 86.6% in September 2021, the latest data available. 68% of the breaches in September were for colorectal pathways. These breaches relate to shortages in the colorectal Faster Diagnosis team, following departures from the team. A new team is now in post.
- The percentage of cancer patients treated within 62 days of referral by their GP was 74.3% in September compared with 65.3% in August. This was above the national average, but below the 85% standard. Patients treated for a colorectal cancer made-up 37% of the breaches of the 62-day standard. The number of patients waiting 63 days or more at the month-end was below (i.e. better than) the 2021/22 elective recovery trajectory at the end of October 2021 (83 against a plan of 95), and down from 92 in September 2021.



People

- Our Trust-wide staff turnover rate remained below the 12% target, and stood at 10.3% for the year to 31 October 2021.
- Our Trust-wide vacancy level was 6.3% as at 31 October 2021, against a target of no more than 5%. This was due to additional funding being made available for a winter ward (Exmoor ward, Musgrove Park Hospital), the Bed Hub, the Rapid Response service and the Discharge Lounge at Musgrove Park Hospital, prior to recruitment taking place.
- As at 31 October 2021, our mandatory training rate was 91.9%, the highest rate recorded since the merger of the two predecessor Trusts.
- Our sickness absence rate for the month of October 2021 was 6.0%, against a target of no more than 4.6%. The recent increases to the rate have been due to an increase in COVID-related sickness.

outstanding care
listening and leading
working together



SFT Council of Governors

Merger Progress Update
15 December 2021



Contents

- Due Diligence update
- NHSEI consultation on revised transactions guidance



Due Diligence update

- In October, function leads filled out detailed Due Diligence templates. These templates are based on the indicative scopes set out in the NHSEI transactions guidance.
- Senior Responsible Officers (SROs) at both Trusts carried out a check and challenge process to confirm/test the accuracy of the templates.
- NEDs will review the Due Diligence process to satisfy themselves it is robust and reliable (Dec- Jan). Initial NEDs briefing on 'red risks' provided on 22/11/21.
- Independent consultants Deloitte will provide independent critical friend review of the entire process, template content, execution of work, and the summary reports to Boards.
- Deloitte will also review the draft findings on high-risk areas (identified through both Trusts' Corporate Risk Registers and Board Assurance Frameworks, and the findings of the initial Due Diligence). Meetings with teams to support this have already begun.



NHSEI consultation on revised transactions guidance



NHSEI consultation on revised transactions guidance

- NHSEI is updating its guidance on NHS transactions
- It launched a consultation on proposed changes to the guidance on 9 November, which runs until 21 December
- The new guidance comes into effect 1 April 2022



NHSEI consultation: proposed changes

- New overall test:

Do the deliverable benefits to the population materially outweigh the costs and risks in the medium to long term?

Increased emphasis in the revised guidance on:

- benefits to patients & wider public
- culture
- staff engagement
- digital integration
- readiness for transformational change
- support from our system partners



SOMERSET NHS FOUNDATION TRUST

DRAFT CONSTITUTION AND STANDING ORDERS FOR THE MERGED ORGANISATION

REPORT TO THE COUNCIL OF GOVERNORS MEETING TO BE HELD ON 15 DECEMBER 2021

Sponsoring Director:	Director of Governance and Corporate Development
Author:	Secretary to the Trust
Executive Summary	<p>A Joint Constitution Review Group was set up to prepare a draft Constitution for the merged organisation.</p> <p>The draft Constitution, including Standing Orders, is attached and any proposed changes are highlighted in red. Proposals to change the number of public governor seats in some of the constituencies from 1 May 2022, from the date of the merger and from 1 May 2023 were approved at the September 2021 Council of Governors meeting. These changes have been incorporated into the current Constitution and are therefore not highlighted as a change in the attached Constitution.</p> <p>Two areas still need to be finalised and these relate to:</p> <ul style="list-style-type: none">• the name of the Trust;• the location of the Headquarters for the merged organisation. <p>In addition, the names of the Board Committees may be subject to change.</p>
Recommendation(s):	The Council of Governors is asked to approve the draft Constitution, including Standing Orders, for the merged organisation.

Action Required (Please put a ✓ against any actions required)							
For approval	✓	For assurance		For information		For discussion	
Links to the Assurance Framework and Corporate/Directorate Risk Register (Please include relevant risks and the current risk rating)							
2. To work in collaboration with our partners in Somerset to develop an Integrated Care System and deliver the Fit for My Future Strategy.							

Financial, Staffing, Legal/Statutory Implications/requirements (Please indicate whether there are any financial and/or legal/statutory implications by putting a ✓ against the relevant box. (Please also provide the necessary details)		
Financial		
Staffing		
Legal/Statutory	✓	Conflict of interest issues will need to be managed.

Equality The Trust wants its services to be as accessible as possible, to as many people as possible. Please indicate whether the report has an impact on the protected characteristics and put a ✓ against one of the two options set out below	
1. This report has been assessed against the Trust's Equality Impact Assessment Tool and there are no proposals or matters which affect any persons with protected characteristics or	✓
2. This report has been assessed against the Trust's Equality Impact Assessment Tool and there are proposals or matters which affect any persons with protected characteristics and the following is planning to mitigate any identified inequalities:	

Public/Staff Involvement History (Please indicate if any consultation/service user/patient and public/staff involvement has informed any of the recommendations within the report)
N/A

Previous Consideration (Indicate if the report has been reviewed by another Board, Committee or Governance Group before submission to the Board or is a follow up report to one previously considered by the Board – eg. in Part B]
Amendments to the Constitution are presented to the Council of Governors as and when required.

SOMERSET NHS FOUNDATION TRUST

DRAFT CONSTITUTION AND STANDING ORDERS FOR THE MERGED ORGANISATION

1. PURPOSE

- 1.1 To present the draft Constitution, including Standing Orders, for the post merger organisation to the Council of Governors for approval.

2. BACKGROUND

- 2.1 A Joint Constitution Review Group was set up to prepare a draft Constitution for the merged organisation. Membership of the Group consisted of the following:

- Ria Zandvliet, Secretary to the Trust SFT (Chairman of the Group);
- Ben Edgar-Attwell, Associate Director of Integration (SFT/YDH);
- Alison Whitman, Lead Governor YDH;
- Anthony Robinson, Deputy Lead Governor YDH;
- Fiona Rooke, Staff Governor YDH;
- Ian Hawkins, Lead Governor SFT;
- Kate Butler, Deputy Lead Governor SFT;
- Neil Thomas, Staff Governor SFT.

- 2.2 The following executive directors were invited to attend the meetings:

- Phil Brice, Director of Governance and Corporate Development;
- David Shannon, Director of Strategic Development and Improvement;
- Jeremy Martin, Director of Transformation

- 2.3 The Group met on 15 June 2021, 12 July 2021, 26 July 2021 and 31 August 2021.

- 2.4 The work of the Group has been completed and the draft Constitution is attached for approval.

3. CHANGES TO THE CONSTITUTION

- 3.1 The approach taken in the development of the Constitution was to start from the model Constitution and insert the relevant wording of each Trust's Constitution to be able to identify any areas of commonality and differences.
- 3.2 This approach identified differences in the way the Constitution and Standing Orders in both trusts were structured and the draft Constitution has been structured in the same way as the Yeovil District Hospital NHS Foundation Trust (YDH)'s Constitution as it was felt that this structure better grouped relevant sections together. This restructuring means that some of the content included in Annexes to the Constitution has been included in the main Constitution but the wording, unless indicated to the contrary, has not changed.
- 3.3 In addition, the Standing Orders have been separated from the main Constitution to be able to clearly distinguish between the main Constitution and Standing Orders and to make the size of the documents easier to manage. This change does not affect the approval process for changes to the Standing Orders for the Council of Governors and Board of Directors.
- 3.4 Further key changes relate to:
- the alignment of content with the YDH Constitution;
 - the clarification or simplification of processes or wording;
 - changes to reflect the new name of NHS Improvement (Monitor);
 - changes in the reference to the NHS Foundation Trust Network;
 - a change in the maximum number of other Non-Executive Directors from eight to nine to reflect the increase in the number of post merger Non-Executive Directors;
 - wording to reflect the agreed process in relation to the Staff Governor elections from the date of merger;
 - the inclusion of a reference to wholly and partially owned corporate entities (subsidiaries).

4. AREAS STILL TO BE FINALISED

- 4.1 The name of the Trust and the location of the Headquarters for the merged organisation still need to be confirmed and it is proposed that approval of the Constitution and Standing Orders also constitutes approval of the insertion of the name of the Trust and headquarter location, when this information becomes available, in the main Constitution and in the Standing Orders.

- 4.2 The Board Committees are referenced in Annex 2 of the Standing Orders – 5.1.9 – and as the names of the Committees may be subject to change, it is also proposed that approval of the Constitution and Standing Orders constitute approval of changes to the names of the Board Committees.

5. RECOMMENDATION

- 5.1 The Council of Governors is asked to approve the draft Constitution, including Standing Orders, for the merged organisation and to approve changes to the name of the Trust, location of the Trust's headquarters and names of the Board Committees as set out in paragraphs 4.1 and 4.2.

SECRETARY TO THE TRUST

XXXXX NHS FOUNDATION TRUST

CONSTITUTION

XXXXXNHS Foundation Trust Constitution

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1. INTRODUCTION

- 1.1 An NHS Foundation Trust is a Public Benefit Corporation which is authorised under the National Health Service Act 2006 to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate which is constituted in accordance with Schedule 7 of the 2006 Act. The Constitution provides, inter alia, for the Trust to have Members, Governors and Directors, and determines who may be eligible for membership and how Governors and Directors are appointed and defines their respective roles and powers. Further, Members of the Trust may vote in elections to, and stand for election for the Council of Governors, as provided in this Constitution.

2. INTERPRETATION AND DEFINITIONS

- 2.1 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
- 2.2 Words importing the singular shall import the plural and vice-versa.
- 2.3 Any reference to any organisation shall include a reference to any successor in title or any organisation or entity which has taken over its functions or responsibilities.
- 2.4 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 2.5 References to legislation also includes all regulations, orders, statutory guidance or directives.
- 2.6 Headings are for ease of reference only and are not to affect interpretation.
- 2.7 All Annexes referred to in this Constitution form part of it.
- 2.8 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.
- 2.9 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 15 of the constitution and has the same meaning as the Annual General Meeting;

"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;

"Authorisation"

means the authorisation issued to the Trust by Monitor under section 35 of the 2006 Act;

"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 and includes both Executive and Non-Executive 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;

"Election Scheme"

means the election rules set out at Annex 4 of the Constitution;

"Executive Director"

means an Executive ~~Director of the Trust~~ member of the Board of Directors of the Trust. An executive member of the Board of Directors can be a voting or a non voting Director'

"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 **member** 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;

"Monitor"

means the body corporate known as Monitor, as provided by section 61 of the 2012 Act;

"NHS England/Improvement (NHSE/I)" is the body corporate known as NHS England/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~~ **4 July 2014**, and as may be amended, varied or replaced by NHS England/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 3 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 8 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 Foundation Trust or (as the case may be) the Trust **or body corporate appointed** 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;~~

- a) a Sexual Offences Prevention Order made under either Section 104 or 105 of the Sexual Offences Act 2003; or
- b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- c) a Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- d) the Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003; or
- e) a Sexual Harm Prevention Order made under Section 103A of the Sexual Offences Act 2003; or
- f) an Interim Sexual Harm Prevention Order made under Section 103F of the Sexual Offences Act 2003; or
- g) a Sexual Risk Order made under Section 122A of the Sexual Offences Act 2003; or
- h) an Interim Sexual Risk Order made under Section 122E of the Sexual Offences Act 2003; or
- i) a Foreign Travel Order made under Section 114 of the Sexual Offences Act 2003.

"Sex Offenders Register"

means the notification requirements, set out in Part 2 of the Sexual Offences Act 2003, commonly known as the "Sex Offenders Register" ~~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 9 of this Constitution;

"Staff Governor"

means a ~~member 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 XXXXXX 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.

3. NAME

3.1 The name of the foundation trust is XXXXXXXX (the Trust).

4. PRINCIPAL PURPOSE

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

4.2 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.

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

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

4.3.2 the promotion and protection of public health.

5. POWERS

- 5.1 The powers of the Trust are set out in the 2006 Act, **as amended by the Health and Social Care Act 2012**, subject to any restrictions in the Terms of its Licence.
- 5.2 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 4 of the Standing Orders.
- 5.3 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 5.4 Subject to any restriction contained in this Constitution, in the 2006 Act, **and to paragraph 5.5 below or in Annex 2 of the Standing Orders**, any of these powers may be delegated to a committee of directors or to an executive director.
- 5.5 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.

6. OTHER PURPOSES

- 6.1 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.

~~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.~~

- 6.2 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.
- 6.3 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.

7. MEMBERSHIP AND CONSTITUENCIES

- 7.1 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.
- 7.2 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 7.2.1 a public constituency
- 7.2.2 a staff constituency

8. PUBLIC CONSTITUENCY

- 8.1 An individual who lives in an area specified in Annex 1, **and is not a member of staff**, as an area for a public constituency may become or continue as a member of the trust.
- 8.2 Those individuals who live in an area specified for a public constituency are referred to collectively as the “Public Constituency”.
- 8.3 The minimum number of members in each Public Constituency is specified in Annex 1.

9. STAFF CONSTITUENCY

- 9.1 An individual who is employed by the Trust under a contract of employment with the Trust (**the Non-Executive Directors of the Trust shall not be regarded as employees for this purpose**) may become or continue as a member of the trust provided:
- 9.1.1 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
- 9.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 9.2 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.

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

9.4 The Staff Constituency shall not be divided into classes.

9.5 The minimum number of members in the Staff Constituency is specified in Annex 2.

9.6 An individual who is:

9.6.1 eligible to become a member of the Staff Constituency, **and or**

9.6.2 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.

9.7 An eligible individual under paragraph 9.1 who has previously informed the Trust that they do not wish to become a member of the Staff Constituency under paragraph 9.6 above may become a Member upon entry to the membership register pursuant to an application by them.

9.8 On receipt of an application for membership as set out in paragraph 9.7 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.

9.9 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.

10. NOT USED

11. NOT USED

12. APPLICATION FOR MEMBERSHIP

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

~~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.~~

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

13. DISQUALIFICATION AND EXPULSION FROM MEMBERSHIP OF THE TRUST

~~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.~~

~~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.~~

- 13.1 An individual shall not become or continue as a Member of the Trust if they:

13.1.1 are a Member of any other constituency or class within a constituency;

13.1.2 are a member or are eligible to be a member of the Staff Constituency;

13.1.3 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;

13.1.4 are less than 12 years of age at the **time date** of their application to become a Member;

13.1.5 were formerly employed by the Trust or the NHS Trust and were dismissed for gross misconduct;

13.1.6 have been identified as a Vexatious Complainant in line with the relevant policy.

13.1.7 have been placed on the Sex Offenders Register and/or is subject to a Sex Offenders Order;

13.1.8 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;

13.1.1 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;

13.1.2 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.

13.1.3 have deemed to have acted in a manner contrary to the interests of the Trust; or

13.2 do not agree to abide by the Trust's principles (as set out in **Annex 4 of the Standing Orders**).

14. TERMINATION OF MEMBERSHIP

14.1 An individual shall cease to be a Member ~~if they on:~~

14.1.1 Resignation by;

14.1.1.1 giving notice in writing to the Trust, or

14.1.1.2 telephoning the Trust and confirming their wish to resign, with such resignation to take effect on written confirmation of their resignation by the Trust;

14.1.2 Disqualification or expulsion from membership under this Constitution pursuant to paragraph 13 above.

14.1.3 ~~die/~~ Death.

~~cease to fulfil the requirements of paragraphs 5, 6, 7 or 8 of this Constitution, as the case may be; be specific~~

14.1.4 ~~or if they~~ have not provided a current postal address.

14.2 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.

~~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.~~

~~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.~~

~~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.~~

~~Upon a decision being made under paragraphs 14.4 or 14.5 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.~~

~~Any decision made under this Constitution 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 XX of this Constitution.~~

- 14.3 ~~Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, it shall give the Member 14 days' written notice to show cause why his name should not be removed from the register of Members. On receipt of any such information supplied by the Member, the Secretary may, if 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.~~

15. ANNUAL MEMBERS' MEETING

- 15.1 The Trust shall hold an annual meeting of its members (referred to

as either 'Annual Members' Meeting or 'Annual General Meeting') ~~so that there is no more than fifteen calendar months between one meeting and the next.~~ The Annual Members' Meeting shall be open to members of the public.

15.2 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:

15.2.1 the Annual Accounts;

15.2.2 any report of the Auditor on them; and

15.2.3 the Annual Report;

15.3 Where an amendment is made to the constitution as per paragraph 53.3 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).

15.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

15.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

15.4 The Council of Governors shall present to the Annual Members Meeting:

15.4.1 A report on the proceedings of its meetings held since the last annual meeting;

15.4.2 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;

15.4.3 A report on any change to the Governors which has taken place since the last annual meeting; and

15.4.4 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.

~~Further provisions about the Annual Members' Meeting are set out in Annex 9—Annual Members' Meeting.~~

16. COUNCIL OF GOVERNORS

- 16.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors. It is to be chaired by the Chairman of the Trust and it is to consist of Public Governors, Staff Governors, Local Authority Governors, and Other Partnership Governors.

17. COUNCIL OF GOVERNORS – COMPOSITION

- 17.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors. It is to be chaired by the Chairman of the Trust and is to consist of Public Governors, Staff Governors and Appointed Governors.
- 17.2 The composition of the Council of Governors is specified in Annex 3.
- 17.3 The aggregate number of Public Governors is to be more than half of the total membership of the Council of Governors.
- 17.4 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 1.
- 17.5 The organisations currently specified that may appoint a member of the Council of Governors are:
- 17.5.1 NHS Somerset Clinical Commissioning Group;
 - 17.5.2 Somerset County Council
 - 17.5.3 District Councils (until 1 May 2023 only)
 - 17.5.4 Somerset Primary Care Board
 - 17.5.5 Voluntary, Community and Social Enterprise (VCSE)
 - 17.5.6 Universities
 - 17.5.7 Symphony Healthcare Services Ltd
 - 17.5.8 Simply Serve Limited

18. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 18.1 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.
- 18.2 The Model Election Rules as published from time to time by the Department of Health, NHS ~~Providers Foundation Trust Network~~ or its successor body, form part of this constitution. The Model Election Rules are attached at Annex 4.
- 18.3 A subsequent variation of the Model Election Rules by the Department of Health, NHS ~~Providers 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.
- 18.4 An election, if contested, shall be by secret ballot.
- 18.5 Paragraph 18.1 and 18.4 above shall apply to all elections for Public and Staff Governors.
- 18.6 Members of each Public and Staff Constituencies may elect any of their members who are eligible to be a Public or Staff Governor.
- 18.7 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 as set out in paragraph 18.7 below. 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.
- 18.8 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 4 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 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".

- 18.9 The procedure for nominating Appointed Governors is set out in Annex 3.

19. COUNCIL OF GOVERNORS - TENURE

19.1 Elected Governors

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

19.1.2 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.

19.1.3 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~~ subject to paragraph 19.1.4 and paragraph 20.

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

~~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 to stand for election for a maximum of one additional year.~~

19.2 Appointed Governors

19.2.1 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them by notice in writing to the Trust ~~or if they cease to be employed by or associated with the appointing organisation.~~

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

19.2.3 An appointed governor shall be eligible for re-appointment at the end of their term ~~subject to paragraph 19.2.4.~~

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

20. TERMINATION OF TERMS OF OFFICE

- 20.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 20.2 A Governor shall cease to hold office if their term of office is terminated in accordance with paragraph 20.1 above and/or they are disqualified from or are otherwise ineligible to hold office as a Governor.
- 20.3 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:
- 20.3.1 The absence was due to reasonable cause; and
 - 20.3.2 That the Governor will be able to start attending meetings of the Council of Governors within such a period as it considers reasonable.
- 20.4 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:
- 20.4.1 They are disqualified from becoming or continuing as a Member under this Constitution;
 - 20.4.2 They have knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act; or
 - 20.4.3 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.
- 20.5 If a Governor is considered to have acted in a manner inconsistent with:
- 20.5.1 the core principles as set out in Annex 4 of the Standing Orders.
 - 20.5.2 the Provider Licence, Authorisation; or

- 20.5.3 the Standing Orders for the Practice and Procedure of the Council of Governors, as set out in Annex 1 of the Standing Orders for; or
- 20.5.4 the Governor's Code of Conduct, or
- 20.5.5 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.
- 20.5.6 The Standing orders for the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.
- 20.5.7 A Governor whose office is terminated under this paragraph 20.5 and paragraph 21 below shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of three years from the date of their removal from office.

21. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 21.1 The following may not become or continue as a member of the Council of Governors:
 - 21.1.1 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;
 - 21.1.2 In the case of an Appointed Governor the appointing organisation withdraws its **appointmentsponsorship** of them.
 - 21.1.3 A person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
 - 21.1.4 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;

- 21.1.5 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;
- 21.1.6 They are a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 21.1.7 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;
- 21.1.8 They are under 16 years of age at the date they are nominated for election or appointment.
- 21.1.9 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;
- 21.1.10 NHS England/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 England/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;
- 21.1.11 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;
- 21.1.12 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;
- 21.1.13 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;

- 21.1.14 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;
- 21.1.15 They have refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
- 21.1.16 They are a member of a local authority Health Overview and Scrutiny Committee;
- 21.1.17 They are the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register;
- 21.1.18 They are an occupant of the same household and/or they are an Immediate Family Member of a Director of the Trust;
- 21.1.19 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;
- 21.1.20 They have failed to make, or has falsely made, any declaration as required by paragraph 18.8 of this Constitution;
- 21.1.21 They have been removed as a Governor or equivalent by any foundation trust within the last five (5) years;
- 21.1.22 They are a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 21.1.23 They are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
- 21.1.24 They have failed to repay (without good cause) any amount of monies properly owed to the Trust,
- 21.1.25 They have received a written warning from the Trust for abuse of any type or;

- 21.1.26 The Partnership Organisation which they represent ceases to exist or withdraws its entitlement to appoint a Governor.
- 21.2 The provisions of paragraph 21.1 above apply to both Elected Governors and Appointed Governors and to anyone seeking election or appointment.
- 21.3 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 21 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.
- 21.4 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.
- 21.5 Upon despatch of any such notification under paragraphs 21.3 or 21.4 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.
- 21.6 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.

~~*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.*~~

22. VACANCIES

- 22.1 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.
- 22.2 Elected Governors shall be replaced using the following provisions:
- 22.2.1 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.

22.2.2 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.

22.2.3 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 paragraphs 22.2.1 and 22.2.2 above.

22.3 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 18 of this Constitution as soon as reasonably practicable.

22.4 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.

22.5 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.

23. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

23.1 The general duties of the Council of Governors are:

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

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

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

23.2 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.

24. COUNCIL OF GOVERNORS: ROLES AND RESPONSIBILITIES

24.1 The **general roles and responsibilities** of the Council of Governors **at a general meeting or otherwise** shall be:

- 24.1.1 To assist the Board of Directors in setting the strategic direction of the trust and targets for the Trust's performance;
- 24.1.2 To monitor the Trust's performance in achieving strategic objectives and performance targets that have been set;
- 24.1.3 To be presented with the annual accounts, any report of the Auditor on them and the annual report;
- 24.1.4 To consider disputes as to membership referred to it pursuant to paragraph 54; and/or
- 24.1.5 To consider resolutions to remove a Governor pursuant to paragraph 20.4 of this Constitution.
- 24.1.6 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 4 of the Standing Orders) and the terms of the Trust's Authorisation;
- 24.1.7 To exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.
- 24.1.8 **To respond as appropriate when consulted by the Board of Directors.**

24.2 The Council of Governors shall appoint the Chairman and other Non-Executive Directors of the Trust at a general meeting. **The appointment and re-appointment process for the Chairman and other Non-Executive Directors is set out in Annex 4 of the Standing Orders.**

24.3 The Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the non-Executive Directors.

- 24.4 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.
- 24.5 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.
- 24.6 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.
- 24.7 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.
- 24.8 The Council of Governors may establish sub-committees (as set out in Annex 1 of the Standing Orders) of its members to discharge its duties under this Constitution or in order to more effectively meet its roles and responsibilities.
- 24.9 The Governors also have the specific role and function of:
- 24.9.1 developing membership **and representing the interests of the Members and holding the Board of Directors to account in relation to the Trust's performance;**
 - 24.9.2 representing the interests of the Members of the Trust as a whole and the interests of the public;
 - 24.9.3 holding the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors;
 - 24.9.4 approving an application by the Trust to enter into a merger, acquisition, separation or dissolution.
- 24.10 **The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.**

25. COUNCIL OF GOVERNORS – REMUNERATION AND TRAVEL EXPENSES

- 25.1 Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer (such as in the instance of staff governors).
- 25.1 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.

26. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 26.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 33.1 below) or, in their absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 37.1 below) shall chair at meetings of the Council of Governors and the person chairing the meeting shall have a casting vote.
- 26.2 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.
- 26.3 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.
- 26.4 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 1 of the Standing Orders.
- 26.5 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.

27. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

- 27.1 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.

- 27.2 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. These provisions are set out in Annex 1 of the Standing Orders.

28. LEAD GOVERNOR

- 28.1 The Governors may (at their discretion) appoint a Lead **and Deputy 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.

- 28.2 If the Governors make the appointments specified in Standing Order 28.1 above, then the following provisions of this Standing Order shall apply:

28.2.1 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.

28.2.2 Subject to paragraph 28.1, the Lead **and Deputy Lead Governor** so appointed shall hold office for a period of 12 calendar months but shall be eligible for reappointment at that time.

28.2.3 The contact details of the Lead **and Deputy Lead** Governor shall be provided to NHS England/Improvement (Monitor) on appointment. The Lead Governor shall then be responsible for receiving and communicating to the Council of Governors any correspondence from NHS England/Improvement (Monitor).

28.2.4 The Lead **or Deputy 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.

28.3 Notwithstanding the tenure provisions set out at in paragraph 28.2.2 above, if the Lead **and/or Deputy Lead** Governor is considered to have acted in a manner inconsistent with paragraph 28.2.1 above and they are adjudged to have so acted by a majority of not less than 75% of the Council of Governors, then the Lead **and/or Deputy Lead** Governor shall stand down and cease to fulfil the role of Lead **or Deputy Lead** Governor.

29. COUNCIL OF GOVERNORS – STANDING ORDERS

29.1 The standing orders for the practice and procedure of the Council of Governors and further additional provisions are set out in Annex 1 of the Standing Orders.

30. BOARD OF DIRECTORS – GENERAL DUTY

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

31. BOARD OF DIRECTORS – COMPOSITION

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

31.2 The Board of Directors is to comprise:

31.2.1 a non-executive Chairman

31.2.2 up to a maximum of **9** other non-executive directors; and

31.2.3 up to a maximum of 8 executive directors.

31.3 One of the executive directors shall be the Chief Executive.

31.4 The Chief Executive shall be the Accounting Officer.

31.5 One of the executive directors shall be the Finance Director.

31.6 One of the executive directors is to be a registered medical practitioner (**within the meaning of the Medical Act 1983**) or a registered **dentist (within the meaning of the Dentists Act 1984)**.

31.7 One of the executive directors is to be a registered nurse or a registered midwife (**within the meanings of the Nursing and Midwifery Order (SI2002/253)**).

- 31.8 The post of an Executive Director may be held by two individuals on a job-share basis (the executive positions of registered medical practitioner/registered dental practitioner and nurse/midwife cannot be shared between the two professions), but where such an arrangement is in force and the post carries voting rights, the two individuals may only exercise one vote between them at any meeting of the Board of Directors.
- 31.9 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.
- 31.10 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.
- 31.11 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.
- 31.12 Subject to the provisions of paragraphs 31.2 to 31.7 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 31.2 above.

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

- 32.1 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.
- 32.2 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 32.3 Without prejudice to paragraph 32.1 above and subject to the provisions of paragraph 31, the process for appointing new Non-Executive Directors and the Chairman will be as set out in Annex 4 of the Standing Orders.

33. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 33.1 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.
- 33.2 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.

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

- 34.1 A person may be appointed as a non-executive director only if:
- 34.1.1 They are a member of a Public Constituency,
- 34.2 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
- 34.3 They are not disqualified by virtue of paragraph 35 below.

35. BOARD OF DIRECTORS – DISQUALIFICATION

- 35.1 The following may not become or continue as a member of the Board of Directors:
- 35.1.1 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 35.1.2 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.
- 35.1.3 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.
- 35.1.4 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.
- 35.1.5 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.

- 35.1.6 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.
- 35.1.7 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.
- 35.1.8 A person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.
- 35.1.9 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.
- 35.1.10 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.
- 35.1.11 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;
- 35.1.12 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.
- 35.1.13 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.

- 35.1.14 A person who holds an office or paid work with HealthWatch.
- 35.1.15 A person who is a member of a local authority Health Overview and Scrutiny Committee.
- 35.1.16 A person who has failed without reasonable cause to fulfill any training requirements established by the Board of Directors.
- 35.1.17 A person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986.
- 35.1.18 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.
- 35.1.19 A person who is the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register.
- 35.1.20 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
- 35.1.21 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.
- 35.1.22 ~~In the case of a Non-Executive Director, they no longer satisfy paragraph 35.1 above.~~
- 35.1.23 ~~They do not meet the criteria set out in Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (including any modification or re-enactment).~~

36. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIRMAN

- 36.1 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.~~

Fit and Proper Persons Regulation: Care Quality Commission
Regulation 5

~~—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.~~

~~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.~~

~~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.~~

~~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.~~

~~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.~~

37. BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

- 37.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 37.2 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.

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

38. BOARD OF DIRECTORS – MEETINGS

38.1 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.

38.2 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.

38.3 Further provisions are set out in Annex 2 of the Standing Orders.

39. BOARD OF DIRECTORS – STANDING ORDERS

39.1 The standing orders for the practice and procedure of the Board of Directors are attached ~~at Annex 8 to the Constitution as a separate document.~~

40. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

40.1 The duties that a director of the Trust has by virtue of being a director include in particular:

40.1.1 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.

40.1.2 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.

40.2 The duty referred to in sub-paragraph 40.1.1 is not infringed if:

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

40.2.2 The matter has been authorised in accordance with the constitution.

- 40.3 The duty referred to in sub-paragraph 40.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 40.3.1 In sub-paragraph 40.1.2, “third party” means a person other than –
- 40.3.2 The Trust, or
- 40.3.3 A person acting on its behalf.
- 40.4 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.
- 40.5 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 40.6 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 40.7 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.
- 40.8 A director need not declare an interest:
- 40.8.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 40.8.2 If, or to the extent that, the directors are already aware of it;
- 40.8.3 If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
- 40.8.4 By a meeting of the Board of Directors, or
- 40.8.5 By a committee of the directors appointed for the purpose under the constitution.
- 40.9 **A matter shall have been authorised for the purposes of paragraph 40.2.2 above if:**
- 40.9.1 **the Directors, in accordance with the requirements set out in this paragraph 40.9, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 40.1.1 above to avoid Conflicts:**

- 40.9.1.1 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution;
 - 40.9.1.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interest Director; and
 - 40.9.1.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
- 40.9.2 Any authorisation of a Conflict under this paragraph 40.9 may (whether at the time of giving the authorisation or subsequently):
- 40.9.2.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
 - 40.9.2.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 40.9.2.3 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
 - 40.9.2.4 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, he will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and
 - 40.9.2.5 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.

- 40.10 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.
- 40.11 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 40.12 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

41. REGISTERS

41.1 The Trust shall have:

- 41.1.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
- 41.1.2 a register of members of the Council of Governors;
- 41.1.3 a register of interests of governors;
- 41.1.4 a register of directors; and
- 41.1.5 a register of interests of the directors.

42. ADMISSION TO AND REMOVAL FROM THE REGISTERS

Register of Members

- 42.1 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 43 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

- 42.2 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

- 42.3 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

- 42.4 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

- 42.5 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.

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

43. REGISTERS – INSPECTION AND COPIES

- 43.1 The Trust shall make the registers specified in paragraph 42 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 43.2 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.
- 43.3 So far as the registers are required to be made available:
- 43.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 43.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 43.4 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.

44. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

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

44.1.1 a copy of the current constitution,

44.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and

44.1.3 a copy of the latest annual report

44.1.4 a copy of any notice given under section 52 of the 2006 Act.

44.2 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:

44.2.1 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.

44.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

44.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

44.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

44.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

44.2.6 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.

44.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

- 44.2.8 a copy of any final report published under section 65I (administrator's final report),
- 44.2.9 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.
- 44.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 44.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 44.4 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.

45. EXTERNAL AUDITOR

- 45.1 The Trust shall have an auditor and the Trust agrees to provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under Schedule 10 of the 2006 Act.
- 45.2 The Council of Governors shall appoint or remove the **external** auditor at a general meeting of the Council of Governors.
- 45.3 The **external** 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 England/Improvement (Monitor), or its successor body, on standards, procedures and techniques to be adopted.

~~The Board of Directors may resolve that the "external auditor" be appointed to provide a non-audit 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.~~

- 45.4 ~~The external auditor may provide services which are outside of the scope of the annual accounts external audit process (non-audit services). The Council of Governors may agree to delegate the approval of non-audit services to the Audit Committee.~~

46. AUDIT COMMITTEE

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

47. ACCOUNTS

- 47.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 47.2 NHS England/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.
- 47.3 The accounts are to be audited by the Trust's auditor.
- 47.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England/Improvement (Monitor) may with the approval of the Secretary of State direct.
- 47.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

48. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

- 48.1 The Trust shall prepare an Annual Report and send it to NHS England/Improvement (Monitor).
- 48.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England/Improvement (Monitor).
- 48.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 48.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 48.5 Each forward plan must include information about:
 - 48.5.1 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
 - 48.5.2 the income it expects to receive from doing so.
- 48.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 48.5.1 the Council of Governors must:
 - 48.6.1 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
 - 48.6.2 notify the directors of the Trust of its determination.

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.

49. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

- 49.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 49.1.1 the annual accounts
 - 49.1.2 any report of the auditor on them
 - 49.1.3 the annual report.
- 49.2 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.
- 49.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 49.1 with the Annual Members' Meeting.

50. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 50.1 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.
- 50.2 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.

50.3 **Notwithstanding the above provisions and for the avoidance of doubt, a Significant Transaction does not include:**

50.3.1 **transaction pursuant to: Sections 56, 56A 56B and 57A of the 2006 Act; or**

50.3.2 **contracts in place, from time to time, with NHS Somerset Clinical Commissioning Group (or its successor organisation); or**

50.3.3 **contracts in place, from time to time, with any other Clinical Commissioning Groups, or the NHS Commissioning Board (or its successor organisation); or**

50.3.4 **contracts in place, from time to time, with Public Health England (or its successor organisation) and local authorities**

51. INDEMNITY

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

51.2 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.

52. INSTRUMENTS

- 52.1 The Trust shall have a seal.
- 52.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 52.3 **An overview of the sealings is to be presented to the Board of Directors on a quarterly basis.**

53. DISPUTE RESOLUTION PROCEDURES

53.1 Dispute about entitlement to membership

53.1.1 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.

53.2 Dispute in relation to this Constitution (other than about membership)

53.2.1 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.

13.2 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.

13.2.1 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.

13.2.2 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.

13.2.3 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.

54. AMENDMENT OF THE CONSTITUTION

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

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

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

54.2 Amendments made under paragraph 54.1 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.

54.3 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):

54.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

54.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

54.4 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.

54.5 Amendments by the Trust of its constitution are to be notified to NHS England/Improvement (Monitor), or its successor body. For the avoidance of doubt, NHS England/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.

55. DISSOLUTION OF THE TRUST

55.1 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.

56. NOTICES

56.1 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.

56.2 In paragraph 56.1 "electronic communication" shall have the meaning set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

56.3 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 56.1 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.

57. THE ROLE AND RESPONSIBILITIES OF THE SECRETARY

57.1 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.

57.2 Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected to:

57.2.1 Ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors and Members;

57.2.2 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;

57.2.3 Ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for Governors) are complied with;

57.2.4 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

57.2.5 Be available to give advice and support to individual Directors and assistance with professional development.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Ref. Paragraph 8)

Table 1 - Current seats on the Council of Governors

Name of Constituency	For residents of	Minimum number of members	Elected Governors
Mendip	Mendip District Council area	150	4
Sedgemoor	Sedgemoor District Council area	150	4
South Somerset	South Somerset District Council area	200	8
Somerset West and Taunton	Somerset West and Taunton District Council	200	7
Dorset	Dorset	50	1
Outside Somerset and Dorset	England and Wales outside Somerset and Dorset	50	1
Totals	Minimum Membership	800	
	Governors		25

Table 2 - Seats on the Council of Governors from 1 May 2023

Name of Constituency	For residents of	Minimum number of members	Elected Governors
Mendip	Mendip District Council area	150	4
Sedgemoor	Sedgemoor District Council area	150	4
South Somerset	South Somerset District Council area	200	6
Somerset West and Taunton	Somerset West and Taunton District Council	200	5
Dorset	Dorset	50	1
Outside Somerset and Dorset	England and Wales outside Somerset and Dorset	50	1
Totals	Minimum Membership	800	
	Governors		21

- 1.1 Table 1 will be replaced with the table showing the seats from 1 May 2023 on 1 May 2023 and this paragraph will be deleted.

ANNEX 2 – THE STAFF CONSTITUENCY

(Ref. Paragraph 9)

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 12 (twelve).

3. STAFF GOVERNOR ELIGIBILITY

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

- 3.1 ~~Subject to the provisions set out in paragraphs 3.2 and 3.3 below, members of the Staff Constituency may elect any of the members of the Staff Constituency who are eligible to be a Staff Governor.~~
- 3.2 ~~The provision set out below in paragraph 3.3 will apply only for the elections for the two new staff governor seats which will become available from 1 October 2022 and for the two staff governor seats which have remained vacant from 1 May 2022.~~
- 3.3 ~~Only staff who transferred to XXXXXX from the date of the merger and who had a substantive contract with Yeovil District Hospital NHS Foundation Trust on the date of the merger will be eligible to stand for election for the two new and two vacant staff governor seats referred to in paragraph 3.2. In the case of a by-election to be held, all staff members will be eligible to stand for election.~~
- 3.4 ~~Paragraphs 3.2, 3.3. and 3.4 will be removed from the Constitution following the October 2022 staff governor election process without the need for further Council of Governors or Board of Directors' approval.~~

~~4. EXERCISE OF FUNCTIONS~~

- ~~4.1 For the purposes of paragraph XX 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

(Paragraph 17)

1. OBJECTIVES

- 1.1 The Trust shall seek to ensure, subject to the requirements of the 2006 Act, that the composition of the Council of Governors meets the following objectives:
 - 1.1.1. The interests of the community served by the Trust are appropriately represented and the NHS and Trust principles (as set out in Annex 4 of the Standing Orders) are upheld; and
 - 1.1.2. The level of representation of the Public Constituencies, the Staff Constituency, and the Appointing Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and, to this end, the Council of Governors'.
- 1.2 The Council shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Trust's membership strategy.
- 1.3 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.
- 1.4 When appropriate, shall propose amendments to this Constitution.
- 1.5 Shall provide to the Members relevant information concerning the performance and forward plans of the Trust; and
- 1.6 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.

2. COMPOSITION

- 2.1 The Composition of the Council of Governors shall be as follows:

	Electing/Appointing Body		Elected Governors	Appointed Governors
1.1	Public Governors			
	1.1.1	Mendip District Council area	4	
	1.1.2	Sedgemoor District Council area	4	
	1.1.3	South Somerset District Council area	8	
	1.1.4	Somerset West and Taunton District Council	7	
	1.1.5	Dorset	1	
	1.1.6	England and Wales outside Somerset and Dorset	1	
1.2	Staff Governors			
	Staff Constituency		12	
Appointed Governors				
1.3	CCG Governor			
	1.3.1	Somerset Clinical Commissioning Group		1
1.4	Local Authorities' Governors			
	1.4.1	Somerset County Council		1
	1.4.2	District Councils		2
1.5	Partnership Organisations' Governors			
	1.5.1	Somerset Primary Care Board		1
	1.5.2	Voluntary, Community and Social Enterprise (VCSE)		2
	1.5.3	Universities		1
	1.5.4	Symphony Healthcare Services Ltd		1
	1.5.5	Simply Serve Limited		1
Total			37	10

2.2 The Composition of the Council of Governors from 1 May 2023 shall be as follows:

	Electing/Appointing Body		Elected Governors	Appointed Governors
1.1	Public Governors			
	1.1.1	Mendip District Council area	4	
	1.1.2	Sedgemoor District Council area	4	
	1.1.3	South Somerset District Council area	6	
	1.1.4	Somerset West and Taunton District Council	5	
	1.1.5	Dorset	1	

	1.1.6	England and Wales outside Somerset	1	
1.2	Staff Governors			
	Staff Constituency		12	
Appointed Governors				
1.3	CCG Governor			
	Somerset Clinical Commissioning Group			1
1.4	Local Authorities' Governors			
	1.5.1	Somerset County Council		2
1.5	Partnership Organisations' Governors			
	1.6.1	Somerset Primary Care Board		1
	1.6.2	Voluntary, Community and Social Enterprise (VCSE)		2
	1.6.3	Universities		1
	1.6.4	Symphony Healthcare Services Ltd		1
	1.6.5	Simply Serve Limited		1
	Total		33	9

2.3 The table showing the current composition will be replaced with the table showing the position as at 1 May 2023 on 1 May 2023 and this paragraph **and all relevant sections in the Constitution and this Annex will be amended accordingly without the need for further approval from the Council of Governors or the Board of Directors.**

2.4 The Council of Governors shall comprise Governors who are:

2.4.1 Elected by the respective constituencies in accordance with the provisions of this Constitution; or

2.4.2 Appointed in accordance with paragraph 3 of this Annex 3 below.

2.5 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.

3. APPOINTED GOVERNORS

3.1 The following organisations, as listed in paragraph 17.5 shall be entitled to appoint Governors:

3.1.1 Clinical Commissioning Group Governor

3.1.1.1 **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.

3.1.2 Local Authorities' Governors

3.1.2.1 **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.

3.1.2.2 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.

3.1.3 Partnership Organisations' Governors

3.1.3.1 **Somerset Primary Care 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.

3.1.3.2 **Voluntary, Community and Social Enterprise (VCSE)** shall be entitled to co-ordinate the appointment of 2 (two) Governors by notice in writing and delivered to the Secretary.

3.1.3.3 **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; **University of Exeter**, (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003), whose address is Stocker Rd, Exeter EX4 4PY, (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.

3.1.3.4 **Symphony Healthcare Services Ltd** 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.

3.1.3.5 **Simply Serve Limited** 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.

3.2 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.

3.3 The Council of Governors retains the right to review and amend the organisations entitled to appoint a Governor.

3.4 Notwithstanding the provisions of paragraphs 3.1 above, the Chairman may veto the appointment of any Appointed Governor by serving notice in writing on the relevant Organisation where they believe that the appointment in question is unreasonable, irrational, or otherwise inappropriate.

ANNEX 4 - MODEL ELECTION RULES

Model Rules for Elections to the Council of Governors

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3. Computation of time

PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
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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 England/Improvement” means the corporate body known as NHS England/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:

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

3. COMPUTATION OF TIME

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

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

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

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

PART 3: RETURNING OFFICER

4. RETURNING OFFICER

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

5. STAFF

- 5.1 Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as 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.

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)¹

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

39. DE-DUPLICATION OF VOTES

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

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.
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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 spoiled ballot papers and the list of spoiled text message votes;
- (d) The list of lost ballot documents;

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

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

PART 6: COUNTING THE VOTES

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 England/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.

XXXXX NHS FOUNDATION TRUST

STANDING ORDERS

XXXXX NHS FOUNDATION TRUST

STANDING ORDERS

1. INTRODUCTION

- 1.1. The XXXXX NHS Foundation Trust (the "Trust") (previously known as the Somerset 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") **and this Authorisation is of unlimited duration.**
- 1.1. The principal place of business of the Trust is currently at XXXXX
- 1.2. 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 **Trust Board and** 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.**
- 1.3. **The Trust applies the principles of the NHS Foundation Trust Code of Governance, most recently revised in July 2014, which is based upon the principles of the UK Corporate Governance Code issues in 2012.**
- 1.4. The SOs, Scheme of Delegation and SFIs provide a comprehensive business framework. All Executive Directors and Non-Executive Directors, all members of staff, and Governors should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.
- 1.5. 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.
- 1.6. **The Trust has a number of wholly and partially owned corporate entities. These corporate entities are separate, distinct legal entities for commercial purposes and have distinct taxation, regulatory and liability obligations. As separate, independent corporate entities, they are subject to their own governance arrangements, which are the responsibility of the relevant entity's management structure, and therefore these Standing Orders are not applicable. For avoidance of doubt, any matter reserved to the Trust in relation to such corporate entities will be treated as an item of the Trust and will be considered in accordance with these Standing Orders.**

- 1.7. 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.

- 1.8. The Trust shall deal with NHS England/Improvement (Monitor) in an open and co-operative manner and shall promptly notify NHS England/Improvement (Monitor) of anything relating to the Trust of which NHS England/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 England/Improvement (Monitor) may specify from time to time.

ANNEX 1 - STANDING ORDERS FOR THE COUNCIL OF GOVERNORS

(Ref. Paragraphs 19, 20 and 21)

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SCHEDULE A: PRESCRIBED FORM OF DECLARATION OF INTERESTS

1. DEFINITIONS

1.1. In these Standing Orders:

Annual Meeting

means a general meeting of the Council of Governors at which the annual accounts, annual report and external auditors' opinions are presented to the Council of Governors.

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 3.

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.

2. INTERPRETATION

- 2.1. Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these SOs shall bear the same meaning as in the constitution.
- 2.2. for the purposes of these SOs, the "board" means the Board of Directors and the "Council" means the Council of Governors.

3. THE COUNCIL OF GOVERNORS

- 3.1. The roles and responsibilities of the Governors as set out in paragraph 24 of the Constitution 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 23, 24, 26 and 50.

- 3.2. The roles and responsibilities of the Council are to be carried out in accordance with the Regulatory Framework include the following:
- 3.2.1. to hold the Board to account for the performance of the Trust;
 - 3.2.2. to respond as appropriate when consulted by the Board in accordance with the Constitution; and
 - 3.2.3. to prepare and from time to time review the Trust's membership strategy.
- 3.3. The Council and each Governor individually shall at all times seek to comply with the Trust's Code of Governance and the Code of Conduct for the Council.

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. The Chairman shall give such directions as he thinks fit (including a decision to expel or exclude any member of the public and/or press if the individual in question is interfering with or preventing the proper conduct of the meeting).
- 4.1.3. 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.
- 4.1.4. Matters to be dealt with by the Board or the Council following the exclusion of the public and representatives of the press

under SO 4.1.1 above shall be confidential to the Governors. Members of the Council and others in attendance at the request of the person chairing the meeting shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chairman.

- 4.1.5. The Chairman (or Deputy Chairman) will decide what arrangements and terms and conditions they feel are appropriate to offer in extending an invitation to observers, advisors and others to attend and address any meeting of the Board or the Council (as relevant), and may change, alter or vary these terms and conditions as it deems fit.

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.~~

Not less than 8 (eight) Governors may by notice in writing to the Secretary requisition an extraordinary meeting of the Council of Governors and on receipt of such notice the Secretary shall cause such a meeting to be called within 5 (five) working days of receipt of the notice.

- 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 4.16 (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 four (4) 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)~~ **four (4) 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 **or in the case of a notice being sent electronically, on the date of transmission.**
- 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.

4.4. **Setting the Agenda**

- 4.4.1. 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.
- 4.4.2. 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.

4.5. **Petitions**

4.5.1. 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.

4.6. **Written Motions**

4.6.1. 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.

4.6.2. 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.

4.6.3. 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.

4.6.4. 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.

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

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

- 4.6.7. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor or Director (as relevant) to move:
- 4.6.7.1. An amendment to the motion.
 - 4.6.7.2. The adjournment of the discussion or the meeting.
 - 4.6.7.3. That the meeting proceed to the next business (*).
 - 4.6.7.4. The appointment of an ad hoc committee to deal with a specific item of business.
 - 4.6.7.5. That the motion be now put to a vote (*).
 - 4.6.7.6. That the public be excluded from the meeting in relation to the discussion concerning the proposition under SO 4.1.1.
- 4.6.8. In the case of SOs denoted by (*) above, to ensure objectivity motions may only be put by a Governor or a Director who has not previously taken part in the debate.
- 4.6.9. **A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.**
- 4.6.10. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

4.7. **Chairman of Meeting**

- 4.7.1. At any meeting of the Council of Governors, the Chairman, if present, shall preside.
- 4.7.2. 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.
- 4.7.3. 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.
- 4.7.4. 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 **or Deputy Lead** Governor shall preside.

4.8. **Agenda**

- 4.8.1. Where a Governor has requested inclusion of a matter on the agenda in accordance with SO 4.4.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this SO 4.8 shall apply in respect of the proposition.
- 4.8.2. **The Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("Standing Items").**
- 4.8.3. 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.
- 4.8.4. 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.
- 4.8.5. **No business may be transacted at any meeting of the Council which is not specified in the notice of that meeting unless the Chairman, in his absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Council as a matter of urgency. A decision by the Chairman to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.**

4.9. **Report from the Board of Directors**

- 4.9.1. 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.

4.10. Chairman's Ruling

4.10.1. 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.

4.11. Voting

4.11.1. A Governor may not vote at a meeting of the Council of Governors unless, within ~~7 (seven) Clear Days~~ **the 12 months** prior to the commencement of the meeting they have:

4.11.2. made a declaration that they are a member of the constituency which elected them; ~~and-or~~

4.11.3. 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.

4.11.4. Such declaration will be in the form as set out in paragraph 18 of the Constitution.

4.11.5. Subject to SO 4.11.7 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.

4.11.6. 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.

4.11.7. 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.

4.11.8. 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.

4.11.9. If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot or e-mail vote).

- 4.11.10. Subject to SO 4.17, 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 4.11.11 does not apply if an e-mail vote is required under SO 4.17.
- 4.11.11. 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.

4.12. Minutes

- 4.12.1. The minutes of the proceedings of a meeting shall be drawn up by the Secretary or a Nominated Officer and submitted for agreement at the next ensuing meeting of the Council of Governors where they will be signed by the Chairman presiding at it.
- 4.12.2. 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.
- 4.12.3. Minutes of meetings shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of SO 4.1.1 above.

4.13. Suspension of Standing Orders

- 4.13.1. Except where this would contravene any statutory provision or any guidance or best practice advice issued by NHS England/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.
- 4.13.1.1. A decision to suspend the SOs shall be recorded in the minutes of the meeting.

- 4.13.1.2. A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Chairman and Governors.
- 4.13.1.3. No formal business may be transacted while the SOs are suspended.
- 4.13.1.4. **The Audit Committee shall review every decision to suspend SOs.**

4.14. Variation and Amendment of Standing Orders

- 4.14.1. Subject always to paragraph 54 of the Constitution, these SOs shall be amended only if:
 - 4.14.1.1. a notice of proposal under SO 4.4.2 has been given; and
 - 4.14.1.2. no fewer than half the total number of Governors vote in favour of amendment; and
 - 4.14.1.3. no fewer than half of the total number of Governors is present; and
 - 4.14.1.4. the variation proposed has been approved by the Council of Governors and does not contravene a statutory provision or guidance issued by NHS England/Improvement (Monitor) or the Constitution.

4.15. Record of Attendance

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

4.16. Quorum

- 4.16.1. 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.
- 4.16.2. 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.
- 4.16.3. 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 6, 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.

- 4.16.4. 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 4.17 to hold an e-mail vote. At all times, no Governor may vote by proxy.
- 4.16.5. 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.
- 4.16.6. 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 4.17 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.
- 4.16.7. Individual Governor may only cast one vote on the **Proposed Transaction-issue(s) to be voted on** unless a second further vote is required owing to any previous vote not being passed in accordance with SO 4.11.5. Once an e-mail vote has been cast by a Governor in accordance with SO 4.17, the vote cannot be revoked or altered in any way.

4.17. Protocol for Voting by e-mail

- 4.17.1. The Returning Officer is to e-mail a notice of the e-mail vote stating:
 - 4.17.1.1. The details of the issue(s) to be voted upon.
 - 4.17.1.2. The date and time at which the e-mail votes are required to be sent out to the Governors.
 - 4.17.1.3. 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
 - 4.17.1.4. The contact details of the Returning Officer.

- 4.17.2. 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:
- 4.17.2.1. A ballot paper attachment in accessible electronic format with clear instructions as to how to cast their vote by e-mail.
 - 4.17.2.2. A Declaration of Eligibility form (if required). This form may be combined with the ballot paper.
 - 4.17.2.3. Information about the issue(s) to be voted upon.
 - 4.17.2.4. A covering e-mail providing:
 - 4.17.2.4.1. The e-mail address for return of the ballot paper.
 - 4.17.2.4.2. 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. COMMITTEES

- 5.1. Subject to any guidance as may be issued by NHS England/Improvement (Monitor), the Council of Governors may and, if directed by NHS England/Improvement (Monitor), shall appoint committees of the Council of Governors **consisting wholly or partly of its members** to assist it in the proper performance of its functions under the Regulatory Framework, ~~consisting wholly or partly of the Chairman and Governors.~~
- 5.2. **The Council may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors and other persons to assist the Council in carrying out its functions. The Council may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.**
- 5.3. 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.
- 5.4. A committee appointed under SO 5 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.

- 5.5. 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.
- 5.6. 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 England/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.
- 5.7. 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.
- 5.8. Any committee or sub-committee established under this SO 5 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~~ in paragraph 53 of the Constitution.
- 5.9. The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.
- 5.10. 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 England/Improvement (Monitor).
- 5.11. 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 England/Improvement (Monitor).

- 5.12. The Council of Governors may appoint Governors to serve on joint committees with the Board of Directors or committees of the Board of Directors.
- 5.13. In making any recommendations, a committee of the Council must have due regard to the established policies of the Council and shall not depart from them without due reason and consideration. Any such departure and the reason for it shall be drawn to the attention of the Council at the earliest opportunity. The Council requires its committee to refer back to them for a decision.
- 5.14. In consideration of any recommendation, a committee of the Council must comply with:
- 5.14.1. The Trust's Standing Financial Instructions, SOs and written procedures and specific reference to the relevant sections of these documents should be made.
- 5.14.2. Any statutory provisions or requirements.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1. Declaration of Interests

- 6.1.1. The Regulatory Framework requires each Governor to declare to the Secretary:
- 6.1.1.1. any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in SO 6.2.1; and
- 6.1.1.2. any actual or potential pecuniary interest, direct or indirect, in any matter concerning the Trust, as described in SOs 6.2.3 and 6.2.4; and
- 6.1.1.3. any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in SO 6.2.6.
- 6.1.2. 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.
- 6.1.3. 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.

- 6.1.4. **If a Governor has a pecuniary interest, whether direct or indirect, or any material non-financial interest in any contract, proposed contract or other matter which is under consideration by the Council of Governors, they shall disclose that to the rest of the Council of Governors as soon as they are aware of it.**
- 6.1.5. 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.
- 6.1.6. Subject to SO 6.2.5, if a Governor has declared a pecuniary interest (as described in SO 6.2.3 and 6.2.4 they shall not take part in the consideration or discussion of the matter.
- 6.1.7. This SO 6 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).
- 6.1.8. 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.

6.2. Nature of Interests

- 6.2.1. Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by NHS England/Improvement (Monitor):
 - 6.2.1.1. directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
 - 6.2.1.2. ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
 - 6.2.1.3. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or

- 6.2.1.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 6.2.1.5. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
 - 6.2.1.6. 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.
- 6.2.2. For the avoidance of doubt, the following shall not be considered relevant and material for the purposes of these SOs:
- 6.2.2.1. Shares not exceeding 2% of the total share in issue held in any company whose shares are listed on any public exchange.
 - 6.2.2.2. An employment contract held by Staff Governors.
 - 6.2.2.3. An employment contract with the relevant local authority held by a Local Authority Governor.
 - 6.2.2.4. An employment contract with a Partnership Organisation held by a Partnership Governor.
- 6.2.3. A Governor shall be treated as having indirectly a pecuniary interest in a matter, if:
- 6.2.3.1. 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
 - 6.2.3.2. 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.
- 6.2.4. A Governor shall not be treated as having a pecuniary interest in any matter by reason only:
- 6.2.4.1. 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

6.2.4.2. 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

6.2.4.3. of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

6.2.5. Where a Governor:

6.2.5.1. has an indirect pecuniary interest in a matter by reason only of a beneficial interest in securities of a company or other body, and

6.2.5.2. 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

6.2.5.3. 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.

6.2.6. 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.

6.2.7. 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.

6.3. Register of Governors

6.3.1. 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.

6.4. Register of Governors' Interests

6.4.1. 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.

7. STANDARDS OF BUSINESS CONDUCT

7.1. 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 England/Improvement (Monitor).

8. APPOINTMENTS AND RECOMMENDATIONS

8.1. 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.

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

8.3. 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.

8.4. 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.

8.5. 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.

8.6. Where the relationship to a Governor of the Council of Governors of the Trust is disclosed, SO 6 shall apply.

9. MISCELLANEOUS

- 9.1. 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.
- 9.2. 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.
- 9.3. 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 XXXX NHS Foundation Trust

Date [insert]

To the Secretary of XXX NHS Foundation Trust

Dear [insert]

In fulfilment of the obligations imposed on me by paragraph 16 of the Constitution of the XX NHS Foundation Trust and the provisions of Standing Order X of the Standing Orders for the Council of Governors generally, and in particular Standing Order xxx, 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 2 - BOARD OF DIRECTORS STANDING ORDERS
(Ref. Paragraph 32)

CONTENTS:

1. INTERPRETATION
2. THE TRUST BOARD
3. MEETINGS OF THE TRUST
4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION
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1 INTERPRETATION

- 1.1 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).
- 1.2 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.
- 1.3 Words importing the singular shall include the plural and vice-versa.
- 1.4 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 England/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 England/Improvement”

means the body corporate known as NHS England/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.

2 THE TRUST BOARD

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be in the name of the Trust as corporate trustee.
- 2.3 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.
- 2.4 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 England/Improvement (Monitor).
- 2.5 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.

2.6 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.

2.7 **Composition of the Board of Directors**

2.7.1 In accordance with the Constitution, the Board of Directors is to comprise:

2.7.1.1 The following Non-Executive Directors:

2.7.1.1.1 the Chairman, and up to a maximum of 9 (nine) other Non-Executive Directors.

2.7.1.2 the following Executive Directors:

2.7.1.2.1 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 31 of the Constitution.

2.7.2 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.

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

2.7.3.1 They are a member of the Public Constituency, and

2.7.3.2 They are not eligible by virtue of paragraph 34 of the Constitution or disqualified by virtue of paragraph 35.

2.7.4 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.

2.7.5 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.

2.7.6 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 2.7.5.

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

2.8 Register of Directors

2.8.1 In accordance with paragraphs 41 and 42 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.

2.9 Appointment and Removal of the Chairman and other Non-Executive Directors

2.9.1 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 3 for appointing the Chairman and the Non-Executive Directors.

2.9.2 The provisions of paragraph 32 of the Constitution apply to the removal of the Chairman or other Non-Executive Directors.

2.10 Remuneration and Terms of Office of the Chairman and Non-Executive Directors

2.10.1 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.

2.10.2 At the general meeting of the Council of Governors referred to at SO 2.10.1 the Council of Governors shall decide the:

2.10.2.1 period of office;

2.10.2.2 remuneration and allowances; and

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

2.11 Appointment and Powers of Deputy Chairman

2.11.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman and in accordance with paragraph 36 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.

2.11.2 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 2.11.1.

2.11.3 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.

2.12 Remuneration and Terms of Office of the Chief Executive and Executive Directors

2.12.1 The Trust shall establish a committee of Non-Executive Directors in accordance with SO 33 to decide the:

2.12.1.1 remuneration and allowances; and

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

2.13 Disqualification

2.13.1 Directors are subject to the disqualification criteria included at paragraphs 34 and 35 of the Constitution.

3 MEETINGS OF THE TRUST

3.1 Admission of the Public and the Press

3.1.1 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.

3.1.2 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.

3.1.3 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”.

3.1.4 The Chairman shall give such directions as they think 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.

3.1.5 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.

3.1.6 **Matters to be dealt with by the Board following the exclusion of the public and representatives of the press under SO 3.1.4**

above shall be confidential to the Directors. Members of the Board and others in attendance at the request of the person chairing the meeting shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chairman.

- 3.1.7 The Chairman (or Deputy Chairman) will decide what arrangements and terms and conditions they feel are appropriate to offer in extending an invitation to observers, advisors and others to attend and address any meeting of the Board, and may change, alter or vary these terms and conditions as they deem fit.

3.2 Calling Meetings

- 3.2.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.2.2 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.

3.3 Notice of Meetings

- 3.3.1 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)~~ 4 (four) Clear Days before the meeting.
- 3.3.2 Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting.
- 3.3.3 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.

- 3.3.4 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.
- 3.3.5 In the event of an emergency giving rise to the need for an immediate meeting, SOs 3.3.1 to 3.3.4 shall not prevent the calling of such a meeting without the requisite ~~6 (six)~~ 4 (four) 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.

3.4 Agendas

- 3.4.1 Agendas will be dispatched by post and by email to members of the Board of Directors ~~6 (six)~~ 4 (four) 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.
- 3.4.2 Before each meeting of the Board of Directors (where SO 3.1.2 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.
- 3.4.3 **No business may be transacted at any meeting of the Board of Directors which is not specified in the notice of that meeting unless the Chairman, in his absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Board as a matter of urgency. A decision by the Chairman to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.**

3.5 Setting the Agenda

- 3.5.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted.
- 3.5.2 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 3.3. 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.

3.6 Petitions

3.6.1 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.

3.7 Chairman of Meeting

3.7.1 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.

3.7.2 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.

3.8 Chairman's Ruling

3.8.1 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 1.1 the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

3.9 Notices of Motion

3.9.1 Subject to the provisions of SO 3.11 ('Motions: procedure at and during a meeting') and SO 3.12 ('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.

3.9.2 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 3.3.3, this SO shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

3.10 Emergency Motions and Written Motions

3.10.1 Emergency Motions

3.10.1.1 Subject to the agreement of the Chairman, and subject also to the provision of SO 3.11 ('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.

3.10.2 Written Motions

3.10.2.1 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.

3.10.2.2 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.

3.10.2.3 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.

3.10.2.4 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.

3.11 Motions: Procedure at and during a meeting

3.11.1 Who may propose

- 3.11.1.1 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.

3.11.2 Contents of motions

- 3.11.2.1 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:

3.11.2.1.1 the reception of a report;

3.11.2.1.2 consideration of any item of business before the Board of Directors;

3.11.2.1.3 the accuracy of minutes;

3.11.2.1.4 that the Board of Directors proceed to next business;

3.11.2.1.5 that the Board of Directors adjourn;

3.11.2.1.6 that the question be now put.

3.11.3 Amendments to motions

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

- 3.11.3.2 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.

- 3.11.3.3 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.

- 3.11.3.4 No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

3.11.4 Rights of reply to motions

3.11.4.1 Amendments

- 3.11.4.1.1. 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.

3.11.4.2 Substantive/original motion

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

3.11.5 Withdrawing a motion

- 3.11.5.1 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.

3.11.6 Motions once under debate

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

- 3.11.6.1.1. an amendment to the motion;
- 3.11.6.1.2. the adjournment of the discussion, or the meeting;
- 3.11.6.1.3. that the meeting proceed to the next business;
- 3.11.6.1.4. that the question should be now put;
- 3.11.6.1.5. the appointment of an 'ad hoc' committee to deal with a specific item of business;

3.11.6.1.6. a motion under SO 3.1.3 resolving to exclude the public (including the press); and

3.11.6.1.7. that a member be not further heard.

3.11.6.2 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.

3.11.6.3 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.

3.11.6.4 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.

3.12 Motion to Rescind a Resolution

3.12.1 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.

3.12.2 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.

3.13 Voting

- 3.13.1 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.
- 3.13.2 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.
- 3.13.3 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.
- 3.13.4 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.13.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.13.6 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.

3.14 Minutes

- 3.14.1 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.
- 3.14.2 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.

3.14.3 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.

3.15 Suspension of Standing Orders

3.15.1 Except where this would contravene any statutory provision or any guidance or best practice advice issued by NHS England/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.

3.15.2 A decision to suspend the SOs shall be recorded in the minutes of the meeting.

3.15.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.

3.15.4 No formal business may be transacted while the SOs are suspended.

3.15.5 The Audit Committee shall review every decision to suspend the SOs.

3.16 Variation and Amendment of Standing Orders

3.16.1 Subject always to paragraph 38 of the Constitution, these SOs shall be amended only if:

3.16.1.1 relevant notice of a meeting has been served in accordance with SO 3.3;

3.16.1.2 a notice of motion under SO 3.9 has been given;

3.16.1.3 no fewer than half the total of the Non-Executive Directors vote in favour of amendment;

3.16.1.4 at least two-thirds of the Directors are present; and

3.16.1.5 the variation proposed does not contravene the Regulatory Framework, any statutory provisions or any guidance issued by Monitor.

3.17 Record of Attendance

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

3.18 Quorum

- 3.18.1 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 3.13.1 ~~of Annex 7 of this constitution.~~
- 3.18.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.18.3 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 7)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. The above requirement for at least two Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Nomination and Remuneration Committee).

3.19 Joint Directors

- 3.19.1 ~~Where a post of Executive Director is shared by more than one person:~~
- 3.19.1.1 ~~both persons shall be entitled to attend meetings of the Board;~~
 - 3.19.1.2 ~~either of those persons shall be eligible to vote in the case of an agreement between them;~~
 - 3.19.1.3 ~~in the case of disagreements between them no vote shall be cast; and~~
 - 3.19.1.4 ~~the presence of either or both of those person shall count as one person for the purposes of SO 3.13.~~

3.20 Meetings: Electronic Communication

3.20.1 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.

3.20.2 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.

3.20.3 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.

3.20.4 Meetings held in accordance with this SO are subject to SO 3.18 (Quorum). For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.

3.20.5 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.

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 Subject to SO 2.6 and such guidance as may be issued by NHS England/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 4.3 below or by a Director or an Officer in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

4.2 Emergency Powers

4.2.1 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.

4.3 Delegation to committees

- 4.3.1 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.
- 4.3.2 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.

4.4 Delegation to Officers

- 4.4.1 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.
- 4.4.2 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.
- 4.4.3 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.
- 4.4.4 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.

4.5 Delegation of Powers – Scheme of Delegation

4.5.1 Under the SOs relating to the Arrangements for the Exercise of Functions by Delegation (SO 4) 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 5.1.1 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.

4.6 Duty to Report Non-Compliance with Standing Orders

4.6.1 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.

5 COMMITTEES

5.1 Appointment of Committees

5.1.1 Subject to SO 2.6, the Regulatory Framework and such guidance issued by NHS England/Improvement (Monitor), the Board of Directors may and, if directed by NHS England/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.

5.1.2 A committee appointed under SO 5.1.1 may, subject to the Regulatory Framework and such guidance and/or best practice advice as may be issued by NHS England/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.

5.1.3 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.)

- 5.1.4 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.
- 5.1.5 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.
- 5.1.6 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.
- 5.1.7 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 England/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 England/Improvement (Monitor).
- 5.1.8 Where the Board determines, and legislation, regulations and directions or guidance issued by NHSI permit that persons who are not Directors of the Trust shall be appointed to a committee of the Board, the terms of such appointment shall be determined by the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses.

5.1.9 The committees established by the Board of Directors are:

- 5.1.9.1 Audit Committee;
- 5.1.9.2 Nomination and Remuneration Committee;
- 5.1.9.3 Charitable Funds Committee;
- 5.1.9.4 Finance Committee;
- 5.1.9.5 Quality and Governance Committee;
- 5.1.9.6 People Committee; and
- 5.1.9.7 Mental Health Act Committee

5.1.10 The terms of reference of those committees and sub-groups shall be agreed by the Board of Directors.

5.1.11 Notwithstanding the provisions of SO 5.1.9 above, the Board of Directors may establish other committees and sub-groups from time to time at its discretion.

5.2 Confidentiality

5.2.1 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.

5.2.2 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.

6 INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

6.1 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.

- 6.2 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 England/Improvement (Monitor).
- 6.3 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.
- 6.4 The Annual Report is to give:
- 6.4.1 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;
 - 6.4.2 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 40 of the Constitution; and
 - 6.4.3 any other information which NHS England/Improvement (Monitor) requires.
- 6.5 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 42 – 44 of the Constitution is included on the agenda for a meeting of the Board of Directors.
- 6.6 If the Council of Governors so desires such a matter as described within SO 6.5 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 3.3. 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.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 7.1 The Regulatory Framework requires members of the Board of Directors to declare to the Secretary:
- 7.1.1 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

- 7.1.2 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'
- 7.2 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.
- 7.3 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.
- 7.4 If a declaration under SO 7.1 or 7.2 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.
- 7.5 A Director need not declare an interest:
 - 7.5.1 if, it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 7.5.2 if, or to the extent that, the Directors are already aware of it;
 - 7.5.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered by:
 - 7.5.4 a meeting of the Board of Directors, or
 - 7.5.5 by a committee of the Directors appointed for the purpose.
- 7.6 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.
- 7.7 If a Director has declared a pecuniary interest in accordance with SO 7.8 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.

7.8 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by NHS England/Improvement (Monitor):

7.8.1 Directorships, including Non-Executive directorships held in private companies or PLCs (with the exception of those of dormant companies);

7.8.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;

7.8.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

7.8.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

7.8.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;

7.8.6 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.

7.9 Any travelling or other expenses or allowances payable to a Director in accordance with the Constitution shall not be treated as a pecuniary interest.

7.10 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.

7.11 A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

7.11.1 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

7.11.2 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.

7.12 For the avoidance of doubt, the following shall not be considered relevant and material for the purposes of these SOs:

7.12.1.1 Shares not exceeding 2% of the total share in issue held in any company whose shares are listed on any public exchange;

7.12.1.2 An employment contract held by Staff Governors;

7.12.1.3 An employment contract with the relevant local authority held by a Local Authority Governor;

7.12.1.4 An employment contract with a Partnership Organisation held by a Partnership Governor.

7.13 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

7.13.1 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

7.13.2 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.

7.14 Where a Director:

7.14.1 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

7.14.2 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

7.14.3 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.

- 7.15 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.
- 7.16 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.
- 7.17 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.
- 7.18 SO 7 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.

7.19 Register of Interests

7.19.1 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.

7.19.2 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.

7.19.3 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.

7.19.4 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.

8 STANDARDS OF BUSINESS CONDUCT

8.1 Policy

8.1.1 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 England/Improvement (Monitor). This section of the SOs should be read in conjunction with these documents.

8.1.2 Directors and Officers should also comply with provisions of the Trust's Fraud Response Plan and Anti Bribery Policy.

8.2 Interest of Directors and Employees in Contracts

8.2.1 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.

8.2.2 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 7. The Trust shall require such interests to be recorded in the register of interests of Directors.

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

8.3.1 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.

8.3.2 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.

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

8.4 Relatives of Directors or Officers

8.4.1 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.

8.4.2 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.

8.4.3 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.

8.4.4 Where the relationship to an Officer or another Director to a Director of the Trust is disclosed, SO 7 shall apply.

8.5 External Consultants

8.5.1 SO 8 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.

9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

9.1 Custody of Seal

9.1.1 The Common Seal of the Trust shall be kept by the Secretary to the Trust or Nominated Officer in a secure place.

9.2 Sealing of Documents

9.2.1 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.

9.2.2 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).

9.3 Register of Sealing

9.3.1 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).

10 SIGNATURE OF DOCUMENTS

10.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

10.2 The Chief Executive or Nominated Officers shall be authorised, by resolution of the Board 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.

11 MISCELLANEOUS

11.1 Standing Orders to be given to Members and Officers

11.1.1 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.

11.2 Documents having the standing of Standing Orders

11.2.1 The SFIs and the Scheme of Delegation shall have the effect as if incorporated into the SOs.

11.3 Review of Standing Orders

11.3.1 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. **For the avoidance of doubt, any changes to the SFIs and Scheme of Delegation only requires Board of Directors' approval.**

11.4 Corporate Documents

11.4.1 Any corporate documents specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

ANNEX 3 - STANDING ORDERS
TENDERING AND CONTRACT PROCEDURE

CONTENTS:

1. DUTY TO COMPLY WITH STANDING ORDERS
2. DISPOSALS
3. IN-HOUSE SERVICES

1 DUTY TO COMPLY WITH STANDING ORDERS

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 3.15. (Suspension of SOs) is applied).

1.2 EU Directives and Acts Governing Public Procurement

1.2.1 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.

1.2.2 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.

1.2.3 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 England/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.

1.2.4 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 England/Improvement (Monitor) entitled "Best Practice in Making Investments" and the Regulatory Framework.

1.2.5 The Trust should have policies and procedures in place for the control of all tendering activity.

1.3 Formal Competitive Tendering

1.3.1 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.

1.3.2 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:

1.3.2.1 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

1.3.2.2 the supply is proposed under special arrangements negotiated by the Department of Health in which event the said special arrangements must be complied with;

1.3.2.3 where the requirement is covered by an existing national, regional or local contract or framework

1.3.2.4 where provided for in regulatory guidance.

1.3.3 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive:

1.3.3.1 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;

1.3.3.2 where the timescale genuinely precludes competitive tendering (failure to plan the work properly is not a justification for single tender);

1.3.3.3 where it is apparent from the specification that specialist expertise is required to meet it and the expertise is only available from one source;

1.3.3.4 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

- 1.3.3.5 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.
- 1.3.4 The waiving of competitive tendering procedures should not be used:
 - 1.3.4.1 to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure;
 - 1.3.4.2 for building and engineering construction works, and maintenance (other than in accordance with Concode or other relevant regulatory guidance) without Departmental of Health approval.
- 1.3.5 Where it is decided that competitive tendering is not applicable and should be waived by virtue of SO 1.3.3.1 to SO 1.3.3.4 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.
- 1.3.6 Except where SO 1.3.2 and SO 10.3.3, or a requirement under SO 1.2, 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.
- 1.3.7 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.
- 1.3.8 The Board of Directors shall review the Tendering Procedure at least every two years.

1.4 Invitation to tender

- 1.4.1 All invitations to tender shall state the date and time as being the latest time for the receipt of tenders.
- 1.4.2 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.

- 1.4.3 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 1.4.4 and 1.4.5 below.
- 1.4.4 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.
- 1.4.5 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 England/Improvement (Monitor) and the Department of Health and, in minor respects, to cover special features of individual projects.
- 1.4.6 Each significant member of Trust staff involved in the tendering process must declare any interests relating to the project they are overseeing.

1.5 Receipt and safe custody of Formal tenders

- 1.5.1 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.

1.6 Opening Formal tenders

- 1.6.1 Where an electronic tendering package is used the tender documents will be opened electronically by two independent professionals from the procurement service.
- 1.6.2 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.
- 1.6.3 All actions by both procurement staff and suppliers shall be recorded within the system audit reports.

1.7 Admissibility

- 1.7.1 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.
- 1.7.2 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.

1.8 Late tenders

- 1.8.1 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.
- 1.8.2 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.
- 1.8.3 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.

1.8.4 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.

1.8.5 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.

1.8.6 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.

1.9 **Acceptance of formal tenders**

1.9.1 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.

1.9.2 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.

1.9.3 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.

1.9.4 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.

1.9.5 The use of these procedures must demonstrate that the award of the contract was:

1.9.5.1 not in excess of the going market rate/price current at the time the contract was awarded, and

1.9.5.2 achieved best value for money.

- 1.9.6 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 1.16.1.1 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).
- 1.9.7 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.
- 1.9.8 All tenders shall be treated as confidential and shall be retained for inspection.

1.10 **Tender reports to the Trust Board**

- 1.10.1 Reports to the Board of Directors will be made on an exceptional circumstance basis only.

1.11 **List of approved firms**

1.11.1 Building and Engineering Construction Works

- 1.11.1.1 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.
- 1.11.1.2 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.
- 1.11.1.3 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.

1.11.2 Financial Standing and Technical Competence of Contractors

1.11.2.1 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.

1.12 **Exceptions to using approved contractors**

1.12.1 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.

1.12.2 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.

1.13 **Competitive Quotations**

1.13.1 Quotations are required to be obtained where formal tendering procedures have been waived under SOs 1.3.2 or 1.3.3 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.

1.13.2 Where quotations are obtained under SO 1.14 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.

1.13.3 Quotations shall be in writing.

1.13.4 All quotations shall be treated as confidential and shall be retained for inspection.

1.13.5 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.

1.14 Non-Competitive Quotations

1.14.1 Non-competitive quotations in writing may be obtained, in exceptional circumstances, for the following purposes:

1.14.1.1 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;

1.14.1.2 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.

1.14.1.3 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.

1.14.1.4 miscellaneous services, supplies and disposals;

1.14.1.5 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 1.14.1.1 and SO 1.14.1.2 apply)

1.14.1.6 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.

1.15 Quotations to be within Financial Limits

1.15.1 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.

1.16 Authorisation of Tenders and Competitive Quotations

1.16.1 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:

Contracts awarded to the lowest bidder.

1.16.1.1 Below £50,000 - main list authorised signatory

1.16.1.2 £50,000 - £1,000,000 – **main list authorised signatory and** an Executive Director

1.16.1.3 Above £1,000,000 – Trust Board - to be recorded in minutes.

~~**The Finance Director or the Chief Executive must approve any contracts not awarded to lowest bidder.**~~
Contracts not awarded to the lowest bidder:

1.16.1.4 Below £50,000 - Director of Finance **or Chief Executive**

1.16.1.5 £50,000 - £1,000,000 Chief Executive and Chairman

1.16.1.6 Above £1,000,000 – Trust Board – to be recorded in minutes.

Contracts above £1,000,000 incl VAT (over the full period of the contract) must be approved by the Board of Directors.

1.16.2 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.

1.16.3 Formal authorisation must be put in writing. In the case of

authorisation by the Board of Directors this shall be recorded in their minutes.

1.17 Instances where formal competitive tendering or competitive quotation is not required

1.17.1 Where competitive tendering or a competitive quotation is not required, the Trust should adopt one of the following alternatives:

1.17.1.1 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;

1.17.1.2 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.

1.18 Private Partnership

1.18.1 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:

1.18.1.1 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.

1.18.1.2 Where the sum exceeds delegated limits, a business case must be referred to NHS England/Improvement (Monitor) and/or Department of Health for approval or treated as per current guidelines.

1.18.1.3 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 vires.

1.18.1.4 The selection of a contractor/finance company must be on the basis of competitive tendering or

quotations.

1.19 Compliance Requirements for all Contracts (including lease contracts)

1.19.1 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:

1.19.1.1 these SOs;

1.19.1.2 the SFIs;

1.19.1.3 the Trust's Provider Licence;

1.19.1.4 statutory provisions including those giving effect to EU Directives;

1.19.1.5 such of the NHS Standard Contract Conditions as are applicable;

1.19.1.6 appropriate NHS guidance;

1.19.2 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.

1.19.3 Contracts shall include lease and hire purchase agreements.

1.19.4 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.

1.20 Personnel and Agency or Temporary Staff Contracts

1.20.1 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.

1.21 Healthcare Services Agreements

1.21.1 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.

1.21.2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services from providers of healthcare services.

1.22 Cancellation of Contracts

1.22.1 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:

1.22.1.1 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

1.22.1.2 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

1.22.1.3 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.

1.23 Determination of Contracts for Failure to Deliver Goods or Material

1.23.1 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.

1.23.2 The clause referred to at SO 1.23.1 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.

1.24 **Contracts Involving Funds held on Trust**

1.24.1 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.

1.24.2 SO 1.24.1 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.

2 **DISPOSALS**

2.1 **Competitive** Tendering or Quotation procedures shall not apply to the disposal of:

2.1.1 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;

2.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;

2.1.3 items to be disposed of with an estimated sale value as set out in the Scheme of Delegation;

2.1.4 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract; or

2.1.5 land or buildings concerning which Department of Health guidance has been issued but subject to compliance with such guidance; or

2.1.6 any matter which NHS England/Improvement (Monitor) has issued alternate specific guidance and/or best practice advice in relation to.

3 **IN-HOUSE SERVICES**

- 3.1 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.
- 3.2 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
 - 3.2.1 "specification group", comprising the Chief Executive or Nominated Officer(s) and specialist(s).
 - 3.2.2 "in-house tender group", comprising representatives of the in-house team, a nominee of the Chief Executive and appropriate technical support.
 - 3.2.3 "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.
- 3.3 All groups referred to in SO 3.2.1 to 3.2.3 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.
- 3.4 The "evaluation group" shall make recommendations to the Board of Directors.

4. REVIEW OF THE TENDERING AND CONTRACT PROCEDURE

- 4.1 For the avoidance of doubt, the Tendering and Contracting Procedure form part of the Standing Orders but any changes to the procedure only require Board of Directors' approval.

ANNEX 4 - FURTHER PROVISIONS

1. REPRESENTATIVE MEMBERSHIP

- 1.1. The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those eligible for membership. To this end:
 - 1.1.1. 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.
 - 1.1.2. The Council of Governors shall present to each Annual Meeting:
 - 1.1.2.1. 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;
 - 1.1.2.2. the progress of the membership strategy; and
 - 1.1.2.3. any changes to the membership strategy.

2. CO-OPERATION WITH HEALTH SERVICE AND OTHER BODIES

- 2.1. 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.
- 2.2. Notwithstanding the provisions of paragraph 2.1 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.

3. RESPECTS FOR RIGHTS OF PEOPLE

- 3.1. 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.

4. APPOINTMENT OF CHAIRMAN AND NON-EXECUTIVE DIRECTORS

- 4.1. 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.
- 4.2. 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.

4.3. The Nominations and Remuneration Committee shall:

- 4.3.1. 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).
- 4.3.2. take advice, as necessary, from the Director of People and Organisational Development and the Trust Secretary or other internal or external sources
- 4.3.3. 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:
- 4.3.4. 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.
- 4.3.5. 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.
- 4.3.6. 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.

4.4. Subject to the provisions of paragraph 4.3.1 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:

- 4.4.1. 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 4.3.1, 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 4.3.1 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.

- 4.4.2. 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 4.4.4 and 4.4.5 below.
- 4.4.3. The current Chairman or a Non-Executive Director may stand for reappointment, subject to the conditions at paragraph 4.4 above.
- 4.4.4. 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.
- 4.4.5. 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.
- 4.4.6. Appropriate candidates (not more than 5 (five) for each vacancy) will be identified by an Appointments Panel.

- 4.4.7. The Appointments Panel constituted under paragraphs 4.4.4 and 4.4.5 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.
- 4.4.8. 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.
- 4.4.9. 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.

STRATEGY AND PLANNING GROUP

REPORT TO THE COUNCIL OF GOVERNORS MEETING ON 15 DECEMBER 2021

Name of the Working Group	Strategy and Planning Group
Date of the Meeting	10 November 2021
Introduction	<p>The meeting was attended by the following governors: Erica Adams, Paul Aldwinckle (Chair), Paddy Ashe, Richard Brown, Bob Champion, Dave Gudge, Eddie Nicolas, Alan Peak, Rod Williams.</p> <p>In attendance as observers: Kate Butler and Ian Hawkins</p>
Summary of the Discussions	<p>The following items were considered at the meeting:</p> <p>Appointment of new deputy chair The meeting ratified the appointment of Richard Brown as deputy chair of the Group. This position became available after the resignation from the COG of Mike Hodson. An election process via email was undertaken prior to the meeting.</p> <p>New Hospital Programme – Musgrove 2030 Christian Chalker, Clinical Services Planning Manager updated the Group on Musgrove 2030 – The New Hospital Programme. This programme arose out of the announcement of the Government’s September 2019 Health Infrastructure Plan (HIP2) - rolling 5-year capital investment programme across the NHS - which included the construction of 40 new hospitals. Musgrove Park Hospital was identified in the plan as one of the ‘new hospitals’ with unofficial allocation of £450m. In October 2020 HIP2 was renamed ‘New Hospital Programme’.</p> <p>Christian Chalker outlined the objectives of the Musgrove 2030 programme. This included improving safety and equity of care and experience of patient care across the MPH site and Somerset, improving operational efficiency, enhancing retention and recruitment of colleagues, and replacing and enhancing the life expired healthcare infrastructure on the site.</p>



	<p>Governors can view the presentation slides for more information about this in the SPG meetings section in the Governors area on the website.</p> <p>Transport in rural areas This subject was raised at the September COG meeting and referred to the SPG for discussion. As this is a subject of interest to all governors it was suggested that this item should be followed-up at a future Governor development session. A contact at County Hall is to be sought.</p> <p>Yeovil/Somerset FT Merger Update In advance of the Joint Governor session on Monday 12 November, David Shannon outlined the main discussion points for that meeting. These included how the timeline for the merger was developing, updates on the progress of due diligence, the development of a patient benefit case and the process to appoint a new executive team.</p> <p>Board Assurance Framework (BAF) Steve Thomson, Associate Director for Integrated Governance, attended the meeting to answer any questions on the BAF. Kate Butler raised a question around ‘Safe and Sustainable’, which was showing as a high risk. Steve Thomson responded that this was due to patient flow issues and the cancelling of elective surgery appointments. The Trust is in discussion with the Clinical Commissioning Group about these issues. Concern was also raised about the situation in care homes with reduced staffing levels. David Shannon stated that from a Trust perspective vacancy levels were in the main low, the challenges were in respect to sickness levels. The Trust is temporarily over-recruiting in some areas (where possible) in order to compensate for this.</p> <p>It was noted that the biggest area of challenge is in respect to domiciliary care in the community. Kate Butler advised that the voluntary sector is stepping up to help.</p> <p>Draft SPG Workplan 2022 The Workplan for 2022 was approved</p> <p>Commercial Contracts Update There are currently no new contracts to bring to the group’s attention.</p> <p>The Group also received a brief report on the Finance Committee meetings from Richard Brown.</p>
<p>Progress against the Work Plan</p>	<p>Work-plan is being followed to date</p>



Actions Identified	As set out in the report.
Recommendations to the Council of Governors	To note the report.
Date of Next Meeting	Wednesday 9 February 2022 at 14:00.



**REPORT TO THE COUNCIL OF GOVERNORS MEETING
ON 15 DECEMBER 2021**

Name of the Working Group	Quality and Patient Experience Group
Date of the Meeting	12 November 2021
Introduction	This meeting was held virtually and was attended by the following governors: Sue Steele (deputy chair – who chaired the meeting), Jane Armstrong, Judy Cottrell, Philip Jackson, Jos Latour, Neil Thomas, Caroline Toll and Margaret Worth.
Summary of the Discussions	<p>The following items were considered at the meeting and highlights are noted below:</p> <p>Patient section of the performance exception report</p> <ul style="list-style-type: none"> • The extreme pressure the organisation is under was discussed, particularly in terms of referrals and occupancy of inpatient beds (which remain high) across all sectors but particularly in MPH. Some non-urgent operations have been cancelled to release beds. • The resilience of colleagues, and the impacts on patients and carers, due to the pressures were a focus for concern. • There is a focus on supporting domiciliary care so that patients can be discharged and cared for in the community in order to release beds. • The difficulties primary care is facing were mentioned. Some Primary Care Network practices are starting to work together. It was suggested that Andy Heron, Deputy CEO and COO for mental health, neighbourhood and families, be invited to the next meeting to update the Group on the difficulties GPs are facing. <p>Complaints and PALS report</p> <ul style="list-style-type: none"> • There has been an increase in the number of formal complaints. Many are complex and cannot be resolved quickly and are adding to the pressures on clinical colleagues. • Two complaints coordinators have moved to new jobs, which created resource issues. Replacement co-ordinators have been appointed and will start soon. The Team is also recruiting for a short-term PALS co-ordinator role. These posts will enhance the service over a challenging winter. Interim support has been received from colleagues who currently cannot work on the wards.

	<ul style="list-style-type: none"> • There has been a lot of positive feedback on the level of care received by patients, far outweighing concerns raised. • It was acknowledged that visiting restrictions has led to problems in communication with patient’s family members. The Family Liaison Service has been reinstated for six months and this will be a great help in supporting clinical teams. • Problems related to discharge planning is a common theme in complaints and other feedback. A group was formed to investigate the reasons for this and identify improvements. A checklist has been developed and is currently being piloted on three wards. <p>National (Acute) Inpatient Survey Results</p> <ul style="list-style-type: none"> • There were no huge surprises in the results, except in respect to discharge planning, as mentioned above. • The response rate was over 50%, which was in line with other trusts. • There was some slight deterioration with patients’ experience of their care, which is expected to be due to the lack of communication between staff and family, as mentioned above. <p>Update on the experience of Care Workplan and the Carers Support and Involvement Project – this item was deferred to a future meeting.</p> <p>Healthwatch Referral to Treatment Survey</p> <ul style="list-style-type: none"> • The first draft of the survey results is under review and will be ready to share soon, along with an action plan for the recommendations. • The survey didn’t show anything unexpected, but only 72 responses were received out of 500 surveys circulated. • Communication was highlighted as the biggest issue. • It was noted that the Trust was not good at identifying on its system when people are carers. This is to be addressed. <p>QPE Workplan 2022 – This was approved.</p> <p>Other items presented to the Group were the Good to Know Log, feedback from the Quality and Governance Committee, the Mental Health Act Committee and the Sustainability Report.</p>
Progress against the Work Plan	Work-plan is being followed to date.
Actions Identified	As set out in the report.
Recommendations to the Council of Governors	To note the report.
Date of Next Meeting	Monday 7 February 2022, 11:00 – 13:00



PEOPLE GROUP

**REPORT TO THE COUNCIL OF GOVERNORS MEETING
ON 15 DECEMBER 2021**

Name of the Working Group	People Group
Date of the Meeting	4 November 2021
Introduction	<p>This meeting was held virtually on MS Teams and was attended by the following governors: Lynn Pearson (Chair), Manuel Blanco-Guzman, Melanie Devine, Jeanette Keech, Julius Ndlovu, Heather Shearer, Tim Slattery.</p>
Summary of the Discussions	<p>The following items were considered at the meeting:</p> <p>The key items discussed reflected the most recent People Committee agenda and discussions, which is the pattern that has been adopted by the Group. Isobel Clements therefore ran through updates on the following items and took questions from the Group on these:</p> <p>1. Resourcing Deep Dive Key elements discussed:</p> <ul style="list-style-type: none"> ▪ Changes in demand for recruitment July 2019 v. July 2021 (significant increases seen in temporary staffing demand and late notice requests; but also big decrease in nursing vacancies). ▪ Impact of Covid-19 on colleagues – particular concerns raised from the Group regarding the pressure on existing staff when colleagues are off sick. The Group was reassured by plans to over-recruit HCAs and to keep the focus on international recruitment to address this. ▪ International recruitment – there were questions from the Group under this heading regarding the cultural training given to British colleagues so that they can better support international colleagues. A future agenda item will be the improvement plans re pastoral care for these international colleagues. ▪ Recruitment workload – highlighting that SFT recruitment administrators have been managing

	<p>significantly more cases per administrator than YDH & RDE.</p> <ul style="list-style-type: none"> ▪ Recruitment Improvement Project. ▪ Resourcing Dashboard – demonstrated at directorate level. ▪ Resourcing prediction development – the group is particularly interested in the plans around an ageing workforce, and how the prediction work will seek to address this. <p>2. An overview of colleague engagement in respect to the merger. The plans were described as follows for the current and next few months:</p> <ul style="list-style-type: none"> ▪ Confirm key messages and philosophies ▪ Myth-busting ▪ Pulse survey as baseline ▪ Launch Engagement Champions ▪ Managers Engagement event ▪ Set up of key infrastructure: intranet pages, feedback processes ▪ Finalise the clinical integration plan and guide ▪ Begin cultural assessment <p>The Group were also keen to learn about the public engagement plans – Fiona Reid has been invited to the next meeting to outline the communication plan.</p> <p>The Group were also concerned about the amount of energy/resource for the Executive Team and deputies to undertake the merger planning work at the moment; they agreed this needs to be carefully watched.</p> <p>3. Performance Review</p> <p>This is a standing agenda item when the Group reviews the latest People Section of the Board Exception Report. The key element discussed this time was the delays in responses to complaints as it was felt this was likely to have an impact on the wellbeing of the staff involved in the complaint, not just the patients and families involved. The Group therefore asked for the cause of the delays and how they are being addressed, which will be brought back to a later meeting</p> <p>The meeting also received reports from the Membership Strategy Group (which included the detailed membership action plan), the Charitable Funds Committee and the People Committee. The Group’s workplan for 2022 was also agreed.</p>
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	In AOB a question was raised about the increase in working from home since Covid-19 and if it had had an impact on efficiency. There was no data to hand on this, but the Chair indicated that in her team's experience the flexibility of home-working had reduced sickness rates and there had been no noticeable impact on output.
Progress against the Work Plan	Work-plan is being followed to date.
Actions Identified	The only action not included in the above report is the ongoing action to pursue the options for out of hours hot food provision for colleagues (following colleague feedback that current provision is inadequate)
Recommendations to the Council of Governors	To note the report.
Date of Next Meeting	Wednesday 16th February 2022 at 10:30.

SOMERSET NHS FOUNDATION TRUST

**REPORT TO THE COUNCIL OF GOVERNORS MEETING
ON 15 DECEMBER 2021**

Name of the Working Group	Nomination and Remuneration Committee.
Date of the Meeting	No formal meeting of the Committee has taken place since September 2021.
Summary of the Discussions	N/A
Progress against the Work Plan	N/A
Actions Identified	N/A
Recommendations to the Council of Governors	N/A
Date of Next Meeting	To be confirmed.

