



Berkshire Healthcare
NHS Foundation Trust

Berkshire Healthcare NHS Foundation Trust

The Constitution (and Annexures)

Approved by the Council of Governors and Board of Directors

July 2025



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Berkshire Healthcare NHS Foundation Trust
(A Public Benefit Corporation)
Constitution

Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.

References in this Constitution to legislation include all amendments, replacements or re-enactments made.

References to legislation include all regulations, orders, statutory guidance or directives

Where this Constitution refers to publication of a document by:-

- NHS England, this includes reference to its predecessor bodies including Monitor, the NHS Trust Development Authority and the NHS Commissioning Board Authority;
- the Department of Health and Social Care, this includes reference to the Department of Health.

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

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

In this Constitution:-

- **2006 Act** means the National Health Service Act 2006;
- **2012 Act** means the Health and Social Care Act 2012;
- **2022 Act** means the Health and Care Act 2022;
- **Accounting Officer** means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act and in the Accounting Officer Memorandum published by NHSE;
- **Appointment Committee** means a committee appointed by the Council of Governors pursuant to paragraphs 1.2.5 and 1.2.6 of Appendix 3 of Annex 9;
- **Appointed Governor** means a Local Authority Governor, or an Other Partnership Governor;
- **Area of the Trust** means the area, consisting of all the areas, specified in Annex 1, as an area for a public constituency;
- **Audit Committee** means a committee of the Board of Directors as established pursuant to paragraph 37;
- **Auditor** means the Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 36;
- **Board of Directors** means the Board of Directors as constituted in accordance with this 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 on the Trust
- **Chair** means the Chair of the Trust;
- **Chief Executive** means the Chief Executive of the Trust;
- **Clear Day** means a day of the week not including Saturday, Sunday or a public holiday;
- **Complaints Handling Policy** means the Trust's complaints handling policy, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors;

- **Constitution** means this Constitution together with the Annexes and Appendices attached hereto;
- **Council of Governors** means the Council of Governors as constituted in accordance with this Constitution;
- **Deputy Chair** means one of the NEDs appointed by the Council of Governors, either generally or for a specific meeting, to preside at a meeting of the Council of Governors in the absence of the Chair
- **Director** means a member of the Board of Directors, and includes both Executive and Non-Executives;
- **Director's Code of Conduct** means the code of conduct for Directors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors, which all Directors must subscribe to;
- **Elected Governor** means a Staff Governor or a Public Governor;
- **Election Scheme** means the election rules set out at Annex 5 of the Constitution;
- **Finance Director** means the Chief Financial Officer of the Trust;
- **Financial year** means each successive period of twelve months beginning with 1st April;
- **Funds held on trust** means those funds which the Trust holds at the date of its incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under the 2006 Act. Such funds may or may not be charitable;
- **Governor** means a member of the Council of Governors;
- **Governor's Code of Conduct** means the code of conduct for Governors of the Trust, as adopted by the Applicant NHS Trust and as amended from time to time by the Board of Directors, which all Governors must subscribe to;
- **Health Service Body** shall have the meaning ascribed to it in section 9(4) of the 2006 Act;
- **Hospital** means: Prospect Park Hospital, Wokingham Hospital, Wexham Park Hospital, West Berkshire Community Hospital, St Mark's Hospital, King Edward VII Hospital, Heatherwood Hospital, Royal Berkshire Hospital and any associated hospitals, establishments or facilities;
- **Local Authority Governor** means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the Area of the Trust;
- **Local Authority Partnership Agreement** means an agreement between the Trust and a local authority under s.75 of the 2006 Act;
- **Local Healthwatch** means an organisation as defined in s.222 of the Local Government and Public Involvement in Health Act 2007.
- **Member** means a member of the Trust;
- **Model Election Rules** means the model election rules for use in elections of foundation trust councils of governors as published by the NHS Providers (formerly the Foundation Trust Network);
- **NHS England**, a body corporate established under Section 1H of the 2006 Act;
- **Nominated Officer** means an Officer charged with responsibility for discharging specific tasks within the SOs and SFIs;
- **Non-Executive Director** means a Non-Executive Director member of the Board of Directors who does not hold an executive office of the Trust;
- **Officer** means an employee or other person holding paid appointment or office with the Trust;

- **Other Partnership Governor** means a member of the Council of Governors appointed by a partnership organisation other than a local authority;
- **Public Governor** means a member of the Council of Governors elected by the members of a public constituency;
- **Procurement Act** means The Procurement Act 2023, as amended from time to time;
- **PSR Regulations** means the Health Care Services (Provider Selection Regime) Regulations 2023 (SI 2023/1348), as amended from time to time;
- **Regulatory Framework** means the 2006 Act, the 2012 Act, the 2022 Act and the Trust's provider licence;
- **Scheme of Delegation** means the Reservation of Powers to the Board of Directors and Delegation of Powers;
- **Secretary** means the Secretary of the Trust or any other person or body corporate appointed to perform the duties of the Secretary of the Trust, including a joint, assistant or deputy secretary;
- **SFIs** means Standing Financial Instructions;
- **SOs** means Standing Orders;
- **Staff Governor** means a member of the Council of Governors elected by the members of the staff constituency;
- **Trust** means the Berkshire Healthcare NHS Foundation Trust;
- **Trust Headquarters** means London House, London Road, Bracknell, RG12 2UT;
- **Trust Subcontractor** means a contractor to the Trust whose employees exercise functions on behalf of the Trust and which is listed in the register Maintained by the Secretary pursuant to paragraph 33.7.1;
- **Volunteer** means an individual who carries out functions on behalf of the Trust on a voluntary basis under a scheme designated by the Secretary pursuant to paragraph 33.8.1; and
- **Voluntary Organisation** means a body other than a public or local authority, the activities of which are not carried on for profit.

Introduction

This document is the Constitution of Berkshire Healthcare NHS Foundation Trust (the Trust). The Constitution sets out the corporate governance arrangements for the Trust. Much of it is in a form specified by law.

As context for those detailed governance arrangements this foreword sets out the Trust's purpose, mission, values and strategy. The following section summarises the Trust's governance arrangements, focusing in particular on the relationship between the Board of Directors and the Council of Governors.

The Trust: overview and purpose

The Trust provides specialist mental health and community health services to a population of around 900,000 within Berkshire. The Trust operates from more than 100 sites across the county, including its community hospitals, Prospect Park Hospital, clinics and WestCall Out of Hours Service. The Trust also provides health care and therapy to people in their own homes.

The Trust's values

The Trust operates within the seven core principles of the NHS, set out in the NHS Constitution:

1. The NHS provides a comprehensive service, available to all.
2. Access to NHS services is based on clinical need, not an individual's ability to pay.
3. The NHS aspires to the highest standards of excellence and professionalism.
4. The NHS aspires to put patients at the heart of everything it does.
5. The NHS works across organisations boundaries and in partnership with other organisations in the interest of patients, local communities and the wider population.
6. The NHS is committed to providing best value for taxpayers' money and the most effective, fair and sustainable use of finite resources.
7. The NHS is accountable to the public, communities and patients that it serves.

The Trust also has its own core principles:

The Trust:

1. aims to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement;
2. will listen to patients, families and carers (as appropriate) and understand what they have to say and encourage their involvement in decisions about their care;
3. aims to provide a clean, healthy and welcoming hospital environment for patients, visitors and staff;
4. aims to improve the patient's experience of care provided at its Hospitals and by its services respecting their privacy and preserving their dignity;
5. will have open and honest communications between staff and patients, families and carers (as appropriate);
6. will recognise the contribution of staff by developing and supporting them to do their jobs better, and involving them in decision making;
7. aims to provide high quality services through working in partnership;
8. shall exercise its functions effectively, efficiently and economically;
9. 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.

Foundation Trust Governance Structure

The Trust is required by law to establish a governance structure which comprises a Board of Directors, a Council of Governors, and members. The Trust has two membership constituencies – public members, and staff members. The majority of the Trust's Governors are elected by the Trust's public members.

The Trust's Directors have a general statutory duty to act with a view to promoting the success of the organisation so as to maximise the benefits for the members of the Trust as a whole and for the public. The Board is responsible for all aspects of the Trust's performance and for its objectives, priorities and strategy, the Board must, however, have regard to the Council's view on the Trust's strategy and plans. The Board comprises a (Non-Executive) Chair and Non-Executives, who are appointed and may be removed by the Council, and executive directors.

The Council comprises Governors who are elected by the Trust's members and other Governors who are appointed by local partner organisations. The Governors have two general statutory duties: (1) to hold the NEDs individually and collectively to account for the performance of the Board, and (2) to represent the interests of the members of the Trust as a whole and of the public. The Governors also have a number of specific statutory duties. In addition to representing the interests of the members and the public, the Governors are required to feed back to them on the performance of the Trust.

The Constitution sets out the Trust's membership constituencies and refers to the policy which defines the processes by which individuals may become members.

1. Name

- 1.1 The name of the foundation trust is Berkshire Healthcare NHS Foundation Trust (the Trust).

2. Principal purpose

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

3. Powers

- 3.1 The powers of the Trust are set out in the 2006 Act.
- 3.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3 Subject to paragraph 3.4 below, any of these powers may be delegated to a committee of directors or to an executive director.
- 3.4 Where the Trust is exercising the functions of the managers referred to in s.23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an Executive Director of the Board of

Directors nor an employee of the Trust.

3.5 In exercising its powers, the Trust will have regard to:

3.5.1 s.63A of the 2006 Act (duty to have regard to wider effect of decisions), also referred to as the “Triple Aim”.

3.5.2 s.63B of the 2006 Act (duties in relation to climate change).

3.6 The Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the bodies set out in section s.65Z5(1) of the 2006 Act. Where such a function is exercisable jointly the bodies may arrange for the function to be exercised by joint committee as set out in ss.65Z6 of the 2006 Act.

4. Membership and constituencies

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

4.1.1 a public constituency; or

4.1.2 the staff constituency.

4.2 In deciding which areas are to comprise the Area of the Trust, or in deciding whether there should be a patients' constituency, the Trust shall have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services.

4.3 The Trust shall at all times take steps to secure that taken as a whole the actual membership of the Public Constituency is representative of those eligible for such membership. To this end:

4.3.1 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, and at least every three years; and

4.3.2 the Council of Governors shall present to each annual members meeting:

(a) a report on the steps taken to secure that taken as a whole the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership.

(b) the progress of the membership strategy; and

(c) any changes to the membership strategy.

5. Application for membership

5.1 An individual who is eligible to become a member may do so on application to the Trust, or by being invited by the Trust to become a member of the staff constituency in accordance with paragraph 7.

5.2 An individual shall become a member on the date their name is added to the Trust's register of members and shall cease to be a member on the date their name is removed from the register of members.

6. Public Constituency

6.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member.

6.2 Those members who live in an area specified for a public constituency are referred to collectively as a “public constituency”.

6.3 The minimum number of members for each public constituency is specified in Annex 1.

- 6.4** An individual who ceases to live in any area specified in Annex 1 shall cease to be a member of any public constituency. A member who moves from one area to another shall become a member of the public constituency for that new area. Members should notify the Trust of any change of address.
- 6.5** In the case of any doubt the Trust's decision as to whether or not an individual lives in an area shall be final.

7. Staff Constituency

- 7.1** An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member provided:
- 7.1.1** he or she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 7.1.2** he or she has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2** Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency if they have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, the definition of individuals who exercise functions for the purposes of the Trust includes individuals who are Volunteers.
- 7.3** Chapter 1 of Part XIV of the Employment Rights Act 1996 applies in determining whether an individual has been continuously employed by the Trust for the purposes of paragraph 7.1.2 above or has continuously exercised functions for the purposes of the Trust for the purpose of paragraph 7.2 above.
- 7.4** Those individuals who are eligible for membership by reason of this paragraph 7 are referred to collectively as the "staff constituency".
- 7.5** The staff constituency shall be divided into two descriptions of individuals who are eligible for membership of the staff constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the staff constituency.
- 7.6** The minimum number of members in each class of the staff constituency is specified in Annex 2.
- 7.7** An individual who is:
- 7.7.1** eligible to become a member of the staff constituency; and
- 7.7.2** invited by the Trust to become a member of the staff constituency and a member of the appropriate class within the staff constituency, shall become a member of the Trust as a member of the staff constituency and appropriate class within the staff constituency without an application being made unless they inform the Trust that they does not wish to do so.

8. Restriction on membership

- 8.1** A member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 8.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 8.3** An individual shall not be eligible for membership if he or she:
- 8.3.1** is under 12 years of age;
- 8.3.2** fails or ceases to fulfil the criteria for membership of any of the constituencies;
- 8.3.3** has demonstrated aggressive or violent behaviour at any Hospital or other trust premises or during

any other interaction with Trust staff or Sub-contractors or Volunteers and following such behaviour he or she has been asked to leave or has been removed or excluded from any Hospital or other Trust premises or programmes of home or community visits, under the Trust's policy for withholding treatment from violent/aggressive patients: zero tolerance;

- 8.3.4** has been confirmed by the Trust to be a 'vexatious complainant' as defined in the Trust's policy on handling of complaints;
- 8.3.5** has been removed from being a member of another NHS Foundation Trust;
- 8.3.6** has been deemed by the Trust to have acted in a manner contrary to the interests of the Trust; or
- 8.3.7** has previously been removed from being a member of the Trust under paragraph 8.5.3.
- 8.4** Members should ensure their own eligibility for membership and inform the Trust if they cease to be eligible.
- 8.5** A member shall cease to be a member if—
 - 8.5.1** they resign by notice in writing to the Trust;
 - 8.5.2** they die; or
 - 8.5.3** they cease to be eligible for membership under paragraph 8.3 and they are removed from membership following the process set out in 8.6 below.
- 8.6** The Trust shall give any member at least 14 days' written notice of a proposal to remove them from membership under paragraphs 8.5.3 and:
 - 8.6.1** the notice shall state the date by which the member must respond by if they wish to make any representations;
 - 8.6.2** the Trust shall consider any representations made by the member during that notice period, and the Secretary shall decide whether to remove the member;
 - 8.6.3** within 14 days after receiving notice of the Secretary's decision, a person wishing to dispute the decision may require the Secretary to refer the matter to the Council of Governors to determine whether the decision was fair and reasonable taking all relevant matters into account;
 - 8.6.4** where a member does not ask the Secretary to refer their proposed removal to the Council of Governors, they shall cease to be a member 14 days after receiving notice of the Secretary's decision;
 - 8.6.5** where a member does ask the Secretary to refer their proposed removal to the Council of Governors, they shall continue to be a member until the Council of Governors has reached a decision on their membership and provided them with notice;
 - 8.6.6** the decision of the Council of Governors shall be final.
- 8.7** An individual member removed under paragraph 8.6 may make a request to the Secretary that their membership removal be reviewed by the panel of the Council of Governors, chaired by a Non-Executive Director and their eligibility to be a member will be considered at the following points:
 - 8.7.1** no earlier than 12 months from the date of the first review for removal ("the first review");
 - 8.7.2** no earlier than 36 months after the date of the outcome of the first review ("the second review"); and
 - 8.7.3** no earlier than sixty month intervals after the date of the outcome of the second review.
- 8.8** When making a request under paragraph 8.7 the individual must make such a request in writing to the Secretary and outline whether they wish to be considered as eligible to be a member and the reasons for the requested review. The Trust shall endeavour to issue a decision in writing within 28 days of receipt of the request.

9. Council of Governors – composition

- 9.1** The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 9.2** The composition of the Council of Governors is specified in Annex 3.
- 9.3** The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.
- 9.4** At all times more than half of the Governors shall be Elected Governors who are elected by the members of the public constituency.

10. Council of Governors – election of Governors

- 10.1** Elections for Elected Governors shall be conducted in accordance with the Model Election Rules, as may be varied from time to time, which are attached at Annex 5.
- 10.2** A variation of the Model Election Rules shall not constitute a variation of the terms of this Constitution.
- 10.3** An election, if contested, shall be by secret ballot, using the first-past-the-post system.
- 10.4** A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Election Rules he or she has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held. 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.

11. Council of Governors – tenure

- 11.1** Governors may hold office for a period of up to three years.
- 11.2** An Elected Governor shall cease to hold office if he or she ceases to be a member of the constituency or class by which he or she was elected.
- 11.3** An Appointed Governor shall cease to hold office if the sponsoring organisation withdraws its sponsorship of them by notice in writing to the Trust.
- 11.4** Subject to paragraph 11.6 below, an Elected Governor shall be eligible for re-election at the end of their term.
- 11.5** Subject to paragraph 11.6 below, an Appointed Governor shall be eligible for reappointment at the end of their term.
- 11.6** Elected Governors and Appointed Governors may hold office for a maximum of nine consecutive years.

12. Council of Governors – disqualification and removal

- 12.1** A person may not become or continue as a member of the Council of Governors if they:
 - 12.1.1** have been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 12.1.2** are subject to a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986);

- 12.1.3** have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 12.1.4** have within the preceding five years 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;
- 12.1.5** have within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 12.1.6** are a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 12.1.7** are a Director of the Trust, or a director, chair, or chief executive officer of another NHS Foundation Trust;
- 12.1.8** are a Governor of another NHS Foundation Trust which is considered by the Secretary, at their absolute discretion, to be in competition with the Trust;
- 12.1.9** have had their name removed from a list maintained under regulations pursuant to sections 91, 106 or 123 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he or she has not subsequently had their name included in such a list; or
- 12.1.10** they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor.
- 12.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 12.3** A Governor who becomes disqualified must notify the Secretary as soon as practicable and in any event within 14 days of first becoming aware that he or she is disqualified. Upon receipt of such notice the Secretary shall confirm receipt and shall remove the Governor's name from the Register of Governors such that the Governor ceases to act as a Governor.
- 12.4** If the Trust becomes aware that a Governor is disqualified, the Secretary shall give them notice that he or she is disqualified as soon as practicable. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he or she shall cease to act as a Governor.
- 12.5** A Governor's term of office shall be terminated:
 - 12.5.1** by the Governor giving the Secretary notice in writing of their resignation from office at any time during the term of that office.
 - 12.5.2** by the giving of a notice under paragraph 12.3 or 12.4;
 - 12.5.3** by the Council of Governors if a Governor fails to attend two consecutive meetings of the Council of Governors, unless the Council of Governors is satisfied that:
 - (a)** the absence was due to a reasonable cause; and
 - (b)** the Governor will resume attendance at meetings of the Council of Governors again within such a period as it considers reasonable.
 - 12.5.4** if the Council of Governors resolves that:
 - (a)** an individual continuing as a Governor would or would be likely to prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this constitution or otherwise to discharge its duties and functions,
 - (b)** an individual continuing as a Governor would or would be likely to prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and

services,

- (c) an individual continuing as a Governor would or would be likely to adversely affect public confidence in the goods and services provided by the Trust,
 - (d) an individual continuing as a Governor would or would be likely to otherwise bring the Trust into disrepute or be detrimental to the interest of the Trust,
 - (e) an individual continuing as a Governor would or would be likely to prejudice the ability of the Council of Governors to discharge its duties and responsibilities efficiently and effectively,
 - (f) it would not be in the best interests of the Trust for them to continue in office as a Governor,
 - (g) an individual is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and their continuance in office would not be in the best interests of the Trust,
 - (h) an individual has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required them to undertake in their capacity as a Governor,
 - (i) an individual has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, and/or this constitution, or
- 12.5.5** an individual has committed a material breach of this Constitution and/or any code of conduct applicable to Governors and/or the Standing Orders for Governors.
- 12.6** Where there are concerns about a Governor's conduct (including but not limited to where any of the circumstances in 12.5.4 above apply) the Chair or, if the Chair has a conflict of interest, the Vice Chair, shall be authorised to take such action as may be immediately required, including but not limited to:
- 12.6.1** suspension of the Governor concerned so that the matter can be investigated. Any suspension of a Governor shall be confirmed to them in writing in such form as the Chair may decide in the circumstances.
- 12.6.2** commissioning a fair and independent investigation into the matter, to be conducted by one or more individuals with relevant experience, either from within or outside of the Trust.
- 12.7** Where an investigation identifies that a Governor has failed to comply with this Constitution, and/or any code of conduct applying to Governors, and/or the Standing Orders
- 12.7.1** the Governor concerned shall be notified in writing of the non-compliance and he or she shall be invited to respond within a defined appropriate and reasonable timescale. The Governor shall be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence; and
- 12.7.2** the Governors shall consider the findings of the investigation and the response of the Governor whose conduct is being investigated. The Governors may decide whether to approve a statement setting out the investigated Governor's non-compliance, provided this is approved by two-thirds of the Governors present and voting and by a simple majority of the Public Governors present and voting.
- 12.8** Where the Council of Governors decides to approve a statement of non-compliance it may impose such sanctions as shall be deemed appropriate. Such sanctions may include the issuing of a written warning as to the Governor's future conduct and consequences of further non-compliance, suspension from office for a period to be determined by the Council of Governors, non-payment of expenses and removal of the Governor from office.
- 12.9** Where a resolution to remove a Governor from office under paragraph 12.5.4 is proposed and the Governor concerned disagrees with the proposal, the Chair shall offer the Governor in question the opportunity to have the evidence reviewed by an independent assessor. The Chair and the Governor concerned shall seek to agree on a mutually acceptable independent assessor. If no agreement can be reached within 14 days of an individual being proposed, the Chair shall decide. The independent assessor shall be provided with terms of reference for the review, to be approved

by the Chair, requiring the review principally to determine whether or not the proposal is reasonable. Following the outcome of any review, the proposer of the resolution to remove the Governor from office should consider whether or not to withdraw their proposal.

- 12.10** A proposal to remove a Governor from office (including following any review by an independent assessor) under paragraph 12.5.4, shall be considered in a meeting of the Council of Governors. A majority of 75% of the Governors present and voting at that meeting shall be required to pass such a resolution.
- 12.11** The Standing Orders for Governors may provide further for the process to be adopted in cases relating to the termination of a Governor's tenure.
- 12.12** A Governor whose term of office is terminated before it expires shall not be eligible to be a Governor for five years from the date of termination, except by resolution carried by a majority of the Council of Governors voting.

13. Council of Governors – vacancies

- 13.1** If an Elected Governor's seat falls vacant for any reason before the end of the term of office it shall be filled by the second place candidate in the last held election for that seat, provided that the second place candidate achieved at least five percent of the vote in that election. If that individual declines it shall be filled by the third place candidate provided that the third place candidate achieved at least five percent of the vote in the last held election for that seat (the "Reserve Governor"). If the vacancy is filled in this way the Reserve Governor shall be eligible to serve two full three year terms (subject to re-election) in addition to the partial term served.
- 13.2** If a Reserve Governor is not available a by-election shall be held unless an election is due within nine months in which case the seat shall stand vacant until the following scheduled election. With regards to tenure, paragraphs 11.1, 11.2, 11.4 and 11.6 of this constitution shall apply to any Governor elected following a by-election.
- 13.3** If an Appointed Governor's term of office is terminated before it expires, the Trust will invite the relevant appointing body to appoint a new Governor to hold office for the remainder of the term of office.
- 13.4** The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

14. Council of Governors – general duties

- 14.1** The general duties of the Council of Governors are to:
 - 14.1.1** hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors;
 - 14.1.2** represent the interests of the members of the Trust, the public and staff as a whole;
 - 14.1.3** feedback information about the Trust, its vision and its performance to members, the public and stakeholder organisations.
- 14.2** The Trust will take steps to secure that Governors are equipped with the skills and knowledge they require in their capacity as such.

15. Council of Governors – meetings of Governors

- 15.1** The Chair or, in their absence the Vice Chair, shall preside at meetings of the Council of Governors, and the person chairing the meeting shall have a casting vote.
- 15.2** Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors has resolved to exclude members of the public for special reasons.

- 15.3** Meetings of the Council of Governors shall take place as regularly as necessary to discharge its duties and at least four times per calendar year.
- 15.4** For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.

16. Council of Governors – Standing Orders

- 16.1** The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

17. Council of Governors - conflicts of interest of Governors

- 17.1** If a Governor has a financial, non-financial professional or non-financial personal interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he or she becomes aware of it.
- 17.2** The Standing Orders for Governors shall make provision for the disclosure of interests and arrangements following any such disclosure, including, where appropriate, the exclusion of a Governor declaring an interest from the discussion or consideration of the matter in respect of which an interest has been disclosed.

18. Council of Governors – remuneration and travel expenses

- 18.1** Governors are not to receive remuneration from the Trust, provided that this shall not prevent the remuneration of Governors by their employer.
- 18.2** The Trust may pay travelling and other expenses to members of the Council of Governors at such rates as the Trust decides from time to time.

19. Board of Directors – composition

- 19.1** The Trust has a Board of Directors, which comprises both Executive and Non-Executives.
- 19.2** The Board of Directors comprises:
- 19.2.1** a Non-Executive Chair
 - 19.2.2** a maximum of eight other Non-Executive Directors (one of whom may be nominated to be the Senior Independent Director); and
 - 19.2.3** a maximum of seven Executive Directors.
- 19.3** One of the Executive Directors is the Chief Executive.
- 19.4** The Chief Executive is the Accounting Officer.
- 19.5** One of the Executive Directors is the Chief Financial Officer.
- 19.6** One of the Executive Directors is a registered medical practitioner or a registered dentist.
- 19.7** One of the Executive Directors is a registered nurse or a registered midwife.
- 19.8** The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors (including the Chair) is equal to or exceeds the number of Executive Directors.
- 19.9** The validity of any act of the Board of Directors is not affected by any vacancy among the directors

or by any defect in the appointment of any Director.

20. Board of Directors – general duty

- 20.1** 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.

21. Board of Directors – qualification for appointment as a Non-Executive Director

- 21.1** A person may be appointed as a Non-Executive Director only if:
- 21.1.1** He or she is a member of a Public Constituency or where any of the Trust's hospitals includes a medical or dental school provided by a university, he or she exercises functions for the purposes of that university; and
- 21.1.2** He or she is not disqualified by virtue of paragraph 26 below.

22. Board of Directors – appointment and removal of Chair and other Non-Executive Directors

- 22.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors. In doing so, the Council of Governors shall take into account the applicable Code of Governance.
- 22.2** At the General Meeting referred to at paragraph 22.1 the Council of Governors shall decide the:
- 22.2.1** period of office;
- 22.2.2** remuneration and allowances; and
- 22.2.3** the other terms and conditions of office of the Chair and other Non-Executive Directors.
- 22.3** Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

23. Board of Directors – appointment of Vice Chair

- 23.1** The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors to be the Vice Chair.

24. Board of Directors – appointment of Senior Independent Director

- 24.1** The Board (in consultation with the Council of Governors) may appoint any independent 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.
- 24.2** 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 Chair. The Board (in consultation with the Council of Governors) may thereupon appoint another independent Non-Executive Director as Senior Independent Director.
- 24.3** The Senior Independent Director shall perform the role set out in “The NHS Foundation Trust Code of Governance” issued by NHSE.

25. Board of Directors – appointment and removal of the Chief

Executive and other Executive Directors

- 25.1** The Non-Executive Directors shall appoint or remove the Chief Executive.
- 25.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 25.3** A committee consisting of the Chief Executive, the Chair and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

26. Board of Directors – disqualification

- 26.1** A person may not become or continue as a member of the Board of Directors if they:
 - 26.1.1** have been adjudged bankrupt or whose estate has been sequestrated and (in either case) they have not been discharged;
 - 26.1.2** have made a composition or arrangement with, or granted a trust deed for their creditors and have not been discharged in respect of it;
 - 26.1.3** have within the preceding five years 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;
 - 26.1.4** have had their tenure of office as a chair or as a member or director of a Health Service Body been terminated on the grounds that their appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 26.1.5** have had their name removed from a list maintained under regulations pursuant to sections 91, 106, or 123 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included on such a list;
 - 26.1.6** 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;
 - 26.1.7** are an executive or Non-Executive Director or a Governor of another NHS Foundation Trust, or a Governor, Executive Director, Non-Executive Director, Chair, or Chief Executive of another Health Service Body, unless they are or will become a Non-Executive Director of the Trust and the Chair considers that their position at another NHS Foundation Trust or Health Service Body does not give rise to a conflict of interest;
 - 26.1.8** in the case of a Non-Executive Director, no longer satisfy the criteria for appointment;
 - 26.1.9** in the case of an Executive Director, are no longer employed by the Trust;
 - 26.1.10** are a member of a Local Healthwatch;
 - 26.1.11** are a member of a local authority's overview and scrutiny committee for health matters;
 - 26.1.12** are the subject of a disqualification order made under the Company Directors' Disqualifications Act 1986;
 - 26.1.13** are a partner or spouse of an existing Director;
 - 26.1.14** are an 'unfit person' as defined in the Trust's provider licence (as may be amended from time to time), or
 - 26.1.15** do not meet any other statutory requirement for being a director of an NHS foundation trust.

27. Board of Directors – meetings

- 27.1** Meetings of the Board of Directors shall be open to the public, unless the Board of Directors has

resolved that members of the public should be excluded for special reasons.

- 27.2** 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.

28. Board of Directors – Standing Orders

- 28.1** The Standing Orders for the Practice and Procedure of the Board of Directors (the “Standing Orders for Directors”), as may be varied from time to time, are attached at Annex 7.

29. Board of Directors – conflicts of interest of Directors

- 29.1** The duties that a Director has by virtue of being a Director include in particular—
- 29.1.1** 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; and
- 29.1.2** 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.
- 29.2** The duty referred to in sub-paragraph 29.1.1 is not infringed if—
- 29.2.1** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 29.2.2** the matter has been authorised in accordance with the constitution.
- 29.3** The duty referred to in sub-paragraph 29.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 29.4** In sub-paragraph 29.1.2, “third party” means a person other than—
- 29.4.1** the Trust, or
- 29.4.2** a person acting on its behalf.
- 29.5** If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 29.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 29.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 29.8** This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 29.9** A Director need not declare an interest—
- 29.9.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 29.9.2** if, or to the extent that, the Directors are already aware of it; or
- 29.9.3** if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered—
- (a)** by a meeting of the Board of Directors; or
- (b)** by a committee of the Directors appointed for the purpose under the constitution.
- 29.10** The Standing Orders of the Board of Directors shall include provisions about the disclosure of interests and arrangements for a Director with an interest to withdraw from a meeting in relation to

the matter in respect of which he or she has declared an interest.

30. Board of Directors – remuneration and terms of office

- 30.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
- 30.2** 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.

31. Registers

- 31.1** The Trust must have:
 - 31.1.1** a register of members showing, in respect of each member, the constituency to which he or she belong and, where there are classes within it, the class to which they belongs;
 - 31.1.2** a register of members of the Council of Governors;
 - 31.1.3** a register of interests of Governors;
 - 31.1.4** a register of Directors; and
 - 31.1.5** a register of interests of the Directors.
- 31.2** The Secretary shall be responsible for compiling and maintaining the registers, and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

32. Admission to and removal from the registers

- 32.1** Register of members
 - 32.1.1** Subject to paragraph 7.7 above, members must complete and sign an application in the form prescribed by the Secretary.
 - 32.1.2** The Secretary shall maintain the register in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraph 33 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.
- 32.2** Register of Governors
 - 32.2.1** The register shall list the names of Governors, their category of membership of the Council of Governors (public, staff, local authority, or other partnership organisation) and an address through which they may be contacted which may be the Secretary.
- 32.3** Register of Interests of the Governors
 - 32.3.1** The register shall contain the names of each Governor, whether he or she has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Governors.
- 32.4** Register of Directors

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

32.5 Register of interests of Directors

32.5.1 The register shall contain the names of each Director, whether he or she has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Directors.

32.6 Register of Designated Trust Subcontractors

32.6.1 The register shall contain the names of each Trust Subcontractor which is designated by the Trust for the purposes of membership of the Trust.

32.7 Register of Designated Volunteer Schemes

32.7.1 The register shall contain the names of each volunteer scheme which is designated by the Trust for the purposes of membership of the Trust.

33. Registers – inspection and copies

33.1 The Trust shall make the registers specified in paragraph 32 above available for inspection by members of the public, except in the circumstances set out in paragraphs 33.2 to 33.4 below or as otherwise prescribed by regulations.

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

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

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

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

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

34. Documents available for public inspection

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

34.1.1 a copy of the current Constitution;

34.1.2 a copy of the latest annual accounts and of any report of the Auditor on them; and

34.1.3 a copy of the latest annual report.

34.2 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:

34.2.1 a copy of any order made under s.65D (appointment of trust special administrator), s.65J (power to extend time), s.65KC (action following Secretary of State's rejection of final report), s.65L (trusts coming out of administration) or s.65LA (trusts to be dissolved) of the 2006 Act;

34.2.2 a copy of any report laid under s.65D (appointment of trust special administrator) of the 2006 Act;

34.2.3 a copy of any information published under s.65D (appointment of trust special administrator) of the 2006 Act;

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

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

- 34.2.6** a copy of any notice published under s.65F (administrator's draft report), s.65G (consultation plan), s.65H (consultation requirements), s.65J (power to extend time), s.65KA (NHSE's decision), s.65KB (Secretary of State's response to NHSE's decision), s.65KC (action following Secretary of State's rejection of final report) or s.65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- 34.2.7** a copy of any statement published or provided under s.65G (consultation plan) of the 2006 Act;
- 34.2.8** a copy of any final report published under s.65I (administrator's final report) of the 2006 Act;
- 34.2.9** a copy of any statement published under s.65J (power to extend time) or s.65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 34.2.10** a copy of any information published under s.65M (replacement of trust special administrator) of the 2006 Act.
- 34.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 34.4** 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.

35. Auditor

- 35.1** The Trust shall have an Auditor.
- 35.2** The Auditor may be an individual or a firm. A person appointed as auditor must be:
 - 35.2.1** Eligible for appointment as a statutory auditor (Part 42, Companies Act 2006);
 - 35.2.2** Eligible for appointment as a local auditor (Part 4, Local Audit and Accountability Act 2014); or
 - 35.2.3** A member of a body of accountants approved by the regulator for this purpose.
- 35.3** The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

36. Audit Committee

- 36.1** The Trust shall establish a committee of Non-Executives as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

37. Accounts

- 37.1** The Trust must keep proper accounts and proper records in relation to the accounts.
- 37.2** NHSE may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 37.3** The accounts are to be audited by the Auditor.
- 37.4** The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHSE may with the approval of the Secretary of State direct.
- 37.5** The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 37.6** The Trust shall:
 - 37.6.1** lay a copy of the annual accounts, and any report of the auditor on them, before Parliament
 - 37.6.2** send copies of those documents to NHSE within such period as NHSE may direct; and

- 37.6.3** send copies of any accounts prepared pursuant to paragraph 37.2, and any report of an auditor on them to NHSE within such period as NHSE may direct.

38. Annual report and forward plans and non-NHS work

- 38.1** The Trust shall prepare annual reports and send them to NHSE.
- 38.2** The reports shall give information on:
- 38.2.1** the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes;
- 38.2.2** 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;
- 38.2.3** any exercise by the Council of Governors of its power to require a Director to attend a meeting;
- 38.2.4** the Trust's policy on pay, on the work of the committee of Non-Executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors, and on such other procedures as the Trust has on pay;
- 38.2.5** the remuneration of the Directors and on the expenses of the Governors and the Directors; and
- 38.2.6** any other information NHSE requires.
- 38.3** The Trust shall comply with any decision NHSE makes as to:
- 38.3.1** the form of the reports;
- 38.3.2** when the reports are to be sent to it; and
- 38.3.3** the periods to which the reports are to relate.
- 38.4** The Trust shall give information to NHSE as to its forward planning in respect of each Financial Year. The document containing the information with respect to forward planning shall be prepared by the Board of Directors who in doing so shall have regard to the views of the Council of Governors.
- 38.5** The forward planning information shall include information about:
- 38.5.1** 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
- 38.5.2** the income it expects to receive from doing so.
- 38.6** Where the forward planning information contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 38.5.1 the Council of Governors must:
- 38.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
- 38.6.2** notify the Board of Directors of its determination.
- 38.7** The Trust may not implement a proposal for carrying on activities of a kind mentioned in sub-paragraph 38.5.1 if the Council of Governors has:
- 38.7.1** determined that it is not satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
- 38.7.2** has notified the Board of Directors of that determination.

- 38.8** If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purpose of the health service in England, the Trust may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

39. Mergers etc., and Significant Transactions

- 39.1** The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 39.2** The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 39.3** "Significant Transaction" means:
- 39.3.1** the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or
 - 39.3.2** the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or
 - 39.3.3** a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's gross assets before the transaction.
- 39.4** For the purpose of this paragraph 39:
- 39.4.1** "gross assets" means the total of fixed assets and current assets
 - 39.4.2** in assessing the value of any contingent liability for the purposes of sub-paragraph 39.3.3, the Directors:
 - (a) must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
 - (b) may rely on estimates of the contingent liability that are reasonable in the circumstances; and
 - (c) may take account of the likelihood of the contingency occurring.

40. Meetings of Council of Governors to consider annual accounts and reports

- 40.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 40.1.1** the annual accounts
 - 40.1.2** any report of the Auditor on them; and
 - 40.1.3** the annual report.

41. Annual Members' Meeting

- 41.1** The Trust shall hold an annual meeting for its members and members of the public each year. This meeting may be combined with the general meeting of the Council of Governors referred to in paragraph 40.
- 41.2** At least one Director shall attend the meeting and present the following documents to the members at the meeting:
- 41.2.1** the annual accounts

41.2.2 any report of the auditor on them; and

41.2.3 the annual report.

42. Amendment of the Constitution

42.1 The Trust may make amendments to this Constitution only if:

42.1.1 more than half of the members of the Council of Governors voting approve the amendments; and

42.1.2 more than half of the members of the Board of Directors voting approve the amendments.

42.2 Amendments take effect as soon as the conditions in paragraph 42.1 are satisfied, but an amendment shall have no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

42.3 The Trust shall inform NHSE of amendments to the Constitution.

42.4 Where an amendment has been made to this Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust), at least one Governor shall attend the next annual public meeting to be held, at which the Governor shall present the amendment and the members shall be entitled to vote on whether they approve the amendment.

42.5 If more than half the members voting approve the amendment, the amendment shall continue to have effect; otherwise, it shall cease to have effect and the Trust shall take such steps as are necessary as a result.

43. Instruments

43.1 The Trust shall have a seal.

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

44. Indemnity

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

44.2 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors' and officers' liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

45. Dispute Resolution

45.1 In the event of any dispute between the Council of Governors and the Board of Directors:

45.1.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

45.1.2 if the Chair is unable to resolve the dispute he or she 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; and

45.1.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

ANNEX 1

The Public Constituency

(Paragraph 6)

PUBLIC CONSTITUENCIES OF THE TRUST

NAME OF CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Wokingham	All electoral wards within Wokingham District Council area	220	3
Bracknell	All electoral wards within Bracknell Forest Borough Council area	220	3
Slough	All electoral wards within Slough Borough Council area	220	3
Reading	All electoral wards within Reading Borough Council area	220	3
West Berkshire	All electoral wards within West Berkshire Council area	220	3
Windsor & Maidenhead	All electoral wards within Windsor & Maidenhead Royal Borough Council area	220	3
Rest of England	England other than the six areas noted above	50	1
	Minimum Membership	1,370	
	Public Governors		19

ANNEX 2

The Staff Constituency

(Paragraph 7)

1. Staff Constituency: Classes

- 1.1 There shall be two classes of staff members as follows:
 - 1.1.1 Staff members who are employed by the Trust as: Nurses; Nursing Assistants; Doctors (including those with provisional registration); Pharmacists; Psychologists; Psychotherapists; Occupational Therapists; Speech Therapists; and other Allied Health Professionals, will be Assigned to the “Clinical Staff Class”;
 - 1.1.2 Finance, Human Resources, Information Technology, Facilities and Estates and Administration & Clerical staff who are employed by the Trust will be Assigned to the “Non Clinical Staff Class”; and
- 1.2 Trust Subcontractors and Volunteers will be Assigned to the “Non Clinical Staff Class”.
- 1.3 The minimum number of members required for each staff class shall be:
 - 1.3.1 Clinical Staff Class – 500
 - 1.3.2 Non Clinical Staff Class – 500
- 1.4 Individuals who are eligible to be a member of the Staff Constituency may not become or continue as a member of more than one staff class, and individuals who are eligible to join more than one staff class shall be allocated to the staff class for which they are primarily employed.

ANNEX 3

Composition of Council of Governors

(Paragraph 9)

1. Composition

1.1 The Council of Governors shall comprise:

1.1.1 19 Public Governors;

1.1.2 4 Staff Governors comprised of the following:

(a) 2 being elected by the "Clinical Staff Class "

(b) 2 being elected by the "Non Clinical Staff Class"

1.1.3 6 Local Authority Governors; and

1.1.4 3 Other Partnership Governors.

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

1.3 The following organisations ("Partnership Organisations") are specified for the purposes of sub-paragraph 9(7) of Schedule 7 to the 2006 Act and may each appoint one member of the Council of Governors:

1.3.1 The University of Reading, of Whiteknights, PO Box 217, Reading, Berkshire, RG6 6AH, a university currently incorporated by Royal Charter granted on 1 February 1926 (the "University of Reading").

1.3.2 Family Action, a registered charity who is registered on the Central Register of Charities under registration number 01068186 and whose registered address is 34 Wharf Road, London N1 7GR.

1.3.3 Age UK Berkshire, a registered charity with number 07928260 whose registered address is: Unit 119, Broad Street Mall, Reading, RG1 7QE.

2. Appointed Governors

2.1 Local Authority Governors

2.1.1 Bracknell Forest Borough Council, Windsor & Maidenhead Royal Borough Council, Slough Borough Council, Reading Borough Council, Wokingham District Council, and West Berkshire Council their successor organisations may each appoint one Local Authority Governor by notice in writing Signed by the leader of the relevant Council or a member of the relevant Council executive, and delivered to the Secretary.

2.2 Other Partnership Governors

2.2.1 The University of Reading may appoint one Other Partnership Governor by notice in writing signed by the Vice Chancellor or a Pro Vice Chancellor of the University of Reading and delivered to the Secretary;

2.2.2 Age UK Berkshire may appoint one Other Partnership Governor by notice in writing Signed by the Chief Executive of Age UK Berkshire and delivered to the Secretary; and

2.2.3 Family Action may appoint one Other Partnership Governor by notice in writing signed by the Chief Executive of Age Uk Berkshire and delivered to the Secretary.

ANNEX 4

The Model Election Rules

(Paragraph 10)

MODEL ELECTION RULES 2014

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2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
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9. Nomination of candidates
10. Candidate's particulars
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PART 12: MISCELLANEOUS

67. Secrecy
68. Prohibition of disclosure of vote
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70. Delay in postal service through industrial action or unforeseen event

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 (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;

“*Monitor*” means the corporate body known as 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 he or she considers necessary for the purposes of the election.

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of 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 he or she has received it and decide whether the candidate has been validly nominated.

14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.
- 16. Inspection of statement of nominated candidates and nomination forms**
- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.
- 17. Withdrawal of candidates**
- 17.1 A candidate may withdraw from election on or before the date and time for withdrawal by candidates, by providing to the returning officer a written notice of withdrawal which is signed by the candidate and attested by a witness.
- 18. Method of election**
- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by 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 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 he or she has 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 he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.5

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

- (a) require a voter to
 - (i) enter 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 he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (i) the voter's voter ID number;

- (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with 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 he or she can obtain it.

- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter's identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with 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 he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

31. Issue of replacement voting information

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

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1 To cast 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 he or she wishes 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 he or she wishes 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 he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

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

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

36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

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

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

37. Validity of votes

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

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

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

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

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

37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the

internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (c) place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public and patient constituency)¹

38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

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

39. De-duplication of votes

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

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and

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;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and

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

- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record.

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

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

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

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

“non-transferable vote” means a ballot document:

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule STV49,

“preference” as used in the following contexts has the meaning Assigned below:

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

“quota” means the number calculated in accordance with rule STV46,

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

“stage of the count” means:

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

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

“transferred vote” means a vote derived from a ballot document on which a second or

subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

“*transfer value*” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

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.

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

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

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

STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by them under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by them under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 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.

FPP44.2 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.

FPP44.3 A ballot paper on which a vote is marked:

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

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

FPP44.4 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.

FPP44.5 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.

FPP44.6 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.

- FPP44.7 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.
- FPP44.8 A text voting record on which a vote is marked:
- (a) otherwise than by means of a clear mark,
 - (b) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
- FPP44.9 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.
- FPP44.10 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. First stage

- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate and is to record those numbers.
- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

- STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next

lowest recorded vote, or

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

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

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

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

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

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then

lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
 - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he or she has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest

candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

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

STV50. Filling of last vacancies

STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred or would have been transferred but for rule STV47.10.

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he or she obtained the quota.

STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

- FPP51.1 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

FPP52. Declaration of result for contested elections

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

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

FPP52.2 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 FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
 - (ii) in any other case, to the chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

to the chair 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 Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

- FPP59.1 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.
- FPP59.2 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.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 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.
- FPP59.5 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.
- FPP59.6 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.
- FPP59.7 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 chair of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

- STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the

count so that –

- (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
- (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

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 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 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 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. Monitor will refer the application to the independent election arbitration panel appointed by 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 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.

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 5

Standing Orders for the Practice and Procedure of the Council of Governors

(Paragraph 16)

1. Interpretation and Definitions

- 1.1 Save as otherwise permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he or she should be advised by the Chief Executive and Secretary).
- 1.2 Terms used in these Standing Orders have the meaning given to them in the Constitution.
- 1.3 Words importing the masculine gender include the feminine gender and vice versa.

2. Meetings of the Council of Governors

2.1 Admission of the Public, Press and Observers

- 2.1.1 The public and representatives of the Press shall be afforded reasonable facilities to attend all meetings of the Council of Governors except where it resolves that members of the public and representatives of the Press be excluded from all or part of a meeting on the grounds that:
 - (a) any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - (b) 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.
 - (c) Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.
 - (d) In the event that the public and press are admitted to all or part of a meeting, the Chair (or other person presiding) shall give such directions as he or she thinks fit in regard to the arrangements for meetings and accommodation of the public and press so as to ensure that the Council's business shall be conducted without interruption and disruption. The public and the press shall be required to withdraw upon the Council resolving "that in the interests of public order the meeting adjourn for (period to be specified) to enable the Council to complete its business without the presence of the public".
 - (e) The Trust may make such arrangements from time to time as it sees fit with regards to extending of invitations to observers to attend and address the Council.

2.2 Calling Meetings

- 2.2.1 Meetings of the Council of Governors shall be held at such times and places and of such format including in person, by using electronic communication or hybrid, as the Council of Governors may determine and there shall be at least four meetings in any year including:
 - (a) 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
 - (b) any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

2.2.2 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 one third of the whole number of the 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 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.

2.3 Notice of Meetings

2.3.1 Before each meeting of the Council of Governors, a notice of the meeting specifying the general nature of the business proposed to be transacted at it and signed by the Chair or by an officer authorised by the Chair to sign on their behalf, shall be sent via email to the usual email address, or sent by post to the usual place of residence, of every Governor, so as to be available to them at least 10 Clear Days before the meeting save in the case of emergencies.

2.3.2 Before each meeting of the Council of Governors a public notice of the time and place, and if appropriate remote access/electronic communications arrangements, of the meeting, and if possible the public part of the agenda, shall be advertised on the Trust's website at least seven days before the meeting, save in the case of emergencies.

2.3.3 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 three Governors will invalidate the meeting. A notice (including a notice sent by email) shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.

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

2.3.5 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be despatched no later than three Clear Days before the meeting, save in the case of emergencies.

2.4 Annual Meeting

2.4.1 The Council of Governors shall hold an annual meeting of the Council of Governors in every calendar year so that there are no more than fifteen calendar months between one meeting and the next and shall present to that meeting:

- (a) A report on the proceedings of its meetings held since the last annual meeting.
- (b) A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be members under the Constitution.
- (c) A report on any change to the composition or membership of the Council of Governors which has taken place since the last annual meeting; and
- (d) 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.

2.5 Setting the Agenda

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

2.5.2 A member 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 Chair at least 10 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. The Chair shall include on the Agenda any matter contained in a request

received at least 10 Clear Days before the meeting. Requests made less than 10 Clear Days before a meeting may be included on the Agenda at the discretion of the Chair.

2.6 Petitions

- 2.6.1** Where a petition has been received by the Trust, the Chair shall include the petition as an item for the Agenda of the next Council of Governors meeting.

2.7 Chair of Meeting

- 2.7.1** At any Council of Governors meeting, the Chair if present, shall preside.
- 2.7.2** If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair shall preside.
- 2.7.3** If the Deputy Chair 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.
- 2.7.4** If all the Non-Executive Directors are absent or are incapable of taking part on the grounds of a conflict of interest, a Governor shall be appointed by the Council of Governors to preside.

2.8 Agenda Proposals

- 2.8.1** Where a Governor has requested inclusion of a matter on the Agenda in accordance with Standing Order 2.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 2.8 shall apply in respect of the proposition.
- 2.8.2** The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 2.8.3** When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- (a) an amendment to the proposition.
 - (b) the adjournment of the discussion or the meeting.
 - (c) that the meeting proceed to the next business.
 - (d) the appointment of an ad hoc committee to deal with a specific item of business.
 - (e) that the motion be now put.
 - (f) that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.
- 2.8.4** In the case of sub-paragraphs 2.8.3.3 and 2.8.3.5.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 2.8.5** No amendment to the proposition shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the proposition.
- 2.8.6** Subject to paragraph 2.9.1, the mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no other Governor shall speak more than once or for more than three minutes.
- ## **2.9** Chair's Ruling
- 2.9.1** 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 Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

2.10 Voting

- 2.10.1** A Governor may not vote at a meeting of the Council of Governors unless he or she has made a declaration in the form specified within Schedule A of these Standing Orders, that he or she is a member of the constituency which elected them and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution. Such declaration must be dated at least 7 Clear Days prior to the commencement of the meeting.
- 2.10.2** Except as stated otherwise in the constitution or these Standing Orders, every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question.
- 2.10.3** All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request. In the event of a meeting held using electronic communication, an electronic voting facility will be made available, including when appropriate, the facility for holding a secret ballot.
- 2.10.4** Whoever is Chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a casting vote.
- 2.10.5** If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 2.10.6** If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 2.10.7** A Governor may only vote if present (either in person or by electronic communication) at the time of the vote on which the question is to be decided; no Governor may vote by proxy.
- 2.10.8** Any matter which could be decided by the Council of Governors in a meeting may be determined by written resolution. A written resolution shall, with any accompanying papers which are relevant, describe the matter to be decided and provide for Governors to sign the resolution to confirm their agreement. A written resolution may comprise identical documents sent to all Governors, each to be signed by a Governor, or one document to be signed by all Governors. A written resolution shall be passed only when at least a majority of the Governors, including a majority of Governors who are members of the public constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice. The Secretary shall keep records of all written resolutions.

2.11 Minutes

- 2.11.1** 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 Chair presiding at it.
- 2.11.2** No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

2.12 Suspension of Standing Orders

- 2.12.1** Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders 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.
- 2.12.2** A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 2.12.3** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Governors.
- 2.12.4** No formal business may be transacted while Standing Orders are suspended.

2.13 Variation and Amendment of Standing Orders

2.13.1 These Standing Orders shall be amended only if:

- (a) a notice of proposal under Standing Order 4.5.2 has been given; and
- (b) at least half the total number of Governors vote in favour of amendment; and
- (c) the variation proposed does not contravene a provision of the Regulatory Framework.

2.14 Record of Attendance

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

2.15 Quorum

2.15.1 No business shall be transacted at a meeting unless at least one third of all the Governors are present, including at least one third of the Public Governors.

2.15.2 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 at least five Clear Days and upon reconvening, those present shall constitute a quorum.

2.15.3 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 Standing Order 7 he or she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

2.16 Meetings: Electronic Communication

2.16.1 In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

2.16.2 A Governor in electronic communication with the Chair and all other parties to a meeting of the Council of Governors or of a committee or sub-committee of the Governors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he or she has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

2.16.3 A meeting at which one or more of the Governors attends by way of electronic communication is deemed to be held at such a place as the Governors 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 Governors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.

2.16.4 Meetings held in accordance with this Standing Order are subject to requirements in respect of quorum. For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.

2.16.5 The Minutes of a meeting held in this way MUST state that it was held by electronic communication and that the Governors were all able to hear each other and were present throughout the meeting.

3. Lead Governor and Deputy Lead Governor

3.1 The Governors shall appoint a Lead Governor and a Deputy Lead Governor at the first meeting of the Council of Governors and at each annual meeting of the Council of Governors thereafter.

3.2 Without prejudice to the right of any Governor to communicate directly with NHSE, the Lead Governor will be the point of contact between NHSE and the Council of Governors.

3.3 Without prejudice to the rights of any Governor to communicate directly with the Chair, the Lead Governor shall be responsible for receiving from Governors and communicating to the Chair any

comments, observations and concerns expressed to them by Governors (other than at meetings of the Council of Governors) regarding the performance of the Trust or any other serious or material matter relating to the Trust or its business

- 3.4** The Deputy Lead Governor shall be responsible for supporting the Lead Governor in their role and for performing the responsibilities of the Lead Governor whenever he or she is known to be unavailable.
- 3.5** Each Governor shall communicate any comment, observation or concern which he or she may have to the Lead Governor in the first instance and only to the Deputy Lead Governor if the Lead Governor is known to be unavailable.
- 3.6** The Lead Governor and Deputy Lead Governor shall be elected by, and from amongst, the Governors who have been elected as Governors from the public constituency of members.
- 3.7** The Lead Governor and the Deputy Lead Governor so appointed shall hold office until the next annual meeting of the Council of Governors but shall be eligible for re-appointment at that time.
- 3.8** Nominations forms for appointment as Lead Governor and Deputy Lead Governor shall be sent out not less than 15 Clear Days prior to the annual meeting of the Council of Governors. Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the principal place of business of the Trust addressed to the Secretary to arrive not less than three Clear Days before the meeting.
- 3.9** There shall be separate forms of nomination for appointment to the position of Lead Governor and the position of Deputy Lead Governor and eligible Governors may be nominated for both positions.
- 3.10** In the event of there being two or more nominations for either appointment a secret ballot shall be held of all the Governors present at the meeting with each Governor present having one vote for each contested appointment.
- 3.11** The meeting shall adjourn while the ballot is taken and the Governor whose nomination receives the largest number of votes for each position shall be appointed.
- 3.12** In the event of an equality of votes the Chair of the meeting shall have a casting vote.
- 3.13** If a Governor shall receive the largest number of votes for appointment as both Lead Governor and Deputy Lead Governor that Governor shall be appointed as Lead Governor and the Governor who received the second largest number of votes for the position of Deputy Lead Governor shall be appointed as Deputy Lead Governor
- 3.14** The result of the ballot shall be announced at the meeting.

4. Committees

- 4.1** The Council of Governors may appoint committees of the Council of Governors to assist it in the proper performance of its functions under the Regulatory Framework, consisting wholly or partly of the Chair and Governors. The Council of Governors may appoint to such committees persons who are neither Governors, nor Directors or Officers of the Trust.
- 4.2** 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 issued by NHSE, 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. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 4.3** The Council of Governors shall approve the members of the Council of Governors' Appointments and Remuneration Committee.
- 4.4** A committee appointed under Standing Order 4 may, subject to approval given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee. 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.

- 4.5** These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors (and to sub-committees established with the approval of the Council of Governors) with the terms “Chair” to be read as a reference to the Chair of the committee, and the term “Governor” to be read as a reference to a member of the committee as the context permits.
- 4.6** Any Committee or Sub-Committee established under this Standing Order 4 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 Paragraph 45 of the Constitution.
- 4.7** 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 NHSE.
- 4.8** 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.
- 4.9** If the Board of Directors agrees, the Council of Governors may appoint Governors to serve on joint committees with the Board of Directors or committees of the Board of Directors. Where Governors are appointed to committees of the Board of Directors they shall have observer status only.

5. Declarations of Interests and Register of Interests

5.1 Declaration of Interests

5.1.1 The Regulatory Framework requires each Governor to declare to the Secretary:

- (a)** any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved or likely to be involved in making as described in Standing Orders 5.2.2, 5.2.3 and 5.2.6; and
- (b)** any actual or potential, direct or indirect, non-financial professional interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 5.2.4 and 5.2.6; and
- (c)** any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Order 5.2.5 and 5.2.6.

5.1.2 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, but within five Clear Days of becoming aware of the existence of that interest, and in a form prescribed by the secretary which shall be included as Schedule B.

5.1.3 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, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and the Chair shall then decide what action to take. This may include excluding the Governor from discussions on the matter and/or prohibiting the Governor from voting on any question with respect to the matter. Subject to Standing Order 5.2.3, if a Governor has declared a financial interest (as described in Standing Order 5.2.2) he or she shall not take part in the consideration or discussion of the matter.

5.1.4 Any interest declared at a meeting of the Council of Governors and subsequent action taken should be recorded in the minutes of the Council of Governor’s meeting at which the interest was declared. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

5.1.5 This Standing Order 7 applies to any committee, sub-committee or joint committee of the Council of

Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he or she is also a Governor).

5.1.6 Governors' interests will be disclosed in the Trust's Annual Report, at least to comply with the Financial Reporting Manual as published by NHSE but the Annual Report may also refer to the published declaration of interests of Governors.

5.2 Nature of Interests

5.2.1 Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by NHSE.

5.2.2 A financial interest is where a Governor may receive direct financial benefits (by either making a gain or avoiding a loss) from the consequences of a decision of the Council of Governors. This could include:

- (a) directorships, including Non-Executive Directorships held in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
- (b) employment in an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
- (c) a shareholding, partnerships, ownership or part ownership of an organisation which is doing or is likely to do business with an organisation in receipt of NHS funding.

5.2.3 A Governor shall not be treated as having a financial interest in a matter by reason only:

- (a) of shares or securities held in collective investment or pensions funds or units of authorised unit trusts; or
- (b) of an interest in any company, body or person with which he or she is 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 matter; or
- (c) of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

5.2.4 A non-financial professional interest is where a Governor may obtain a non-financial professional benefit from the consequence of a decision that the Council of Governors makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a Governor is:

- (a) an advocate for a particular group of patients; or
- (b) a clinician with a special interest; or
- (c) an active member of a particular specialist body; or
- (d) an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.

5.2.5 A non-financial personal interest is where a Governor may benefit personally from a decision that the Council of Governors makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where the Governor is:

- (a) a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or
- (b) a member of a lobbying or pressure group with an interest in health and/or social care.

5.2.6 A Governor will be treated as having an indirect financial interest, non-financial professional interest or non-financial personal interest where he or she has a close association with another individual

who has a financial interest, a non-financial professional interest or a non-financial personal interest who would stand to benefit from a decision in which the Governor is involved in making. This includes material interests of:

- (a) close family members and relatives, including a spouse, partner, parent, child or sibling.
- (b) close friends and associates; and
- (c) business partners.

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

5.3 Register of Governors

5.3.1 The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors, the dates defining their terms of office, and an address through which they may be contacted which may be the Secretary.

5.4 Register of Governors' Interests

5.4.1 The Secretary shall keep a Register of Interests of Governors which shall contain the names of each Governor, whether he or she has declared any interest, and if so, the interest declared.

6. Standards of Business Conduct

6.1 Members of the Council of Governors shall comply with the Trust's Code of Conduct and any guidance issued by NHSE.

7. Appointments and Recommendations

7.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

7.2 Informal discussions outside the Appointment Committee or Nominations Committee, whether solicited or unsolicited, should be declared to the panel or committee.

7.3 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.

7.4 The Chair 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 his delegated officer to report to the Council of Governors any such disclosure made.

7.5 On appointment, members of the Council of Governors should disclose to the Council of Governors whether they are related to any other member of the Council of Governors or holder of any office in the Trust.

7.6 Where the relationship to a member of the Council of Governors of the Trust is disclosed, Standing Order 5 shall apply.

8. Miscellaneous

8.1 The Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to

ensure that each Governor understands their responsibilities within these Standing Orders.

- 8.2** These Standing Orders including all documents having effect as if incorporated in them shall be reviewed no less frequently than every two years and any resulting changes approved by the Board of Directors and the Council of Governors.
- 8.3** If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

SCHEDULE A

Declaration to the Secretary of Berkshire Healthcare NHS Foundation Trust

A person may not stand for election to the Council of Governors as a public governor unless he or she has made a declaration in the form specified below of their qualification to vote as a member of the public constituency and is not prevented from being a member of the Council of Governors by paragraph 12 (disqualification and removal).

THE DECLARATION

I hereby declare that I am entitled to stand for election to the Council of Governors as a governor elected by the public constituency because I am a member of the public constituency and I am not prevented from being a member of the Council of Governors of the Trust

1. By paragraph 8 of Schedule 7 to the National Health Service Act 2006, which provides that a person may not become or continue as a member of the Council of Governors if he or she is a person:

- who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 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;
- who has within the preceding five years 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, or

2. By paragraph 12 (*Council of Governors disqualification and removal*) of this Constitution.

I further hereby declare that I am entitled to stand for election to the Council of Governors as a governor elected by the public constituency under the Constitution of the Trust.

Signed.....Name.....

Dated

SCHEDULE B

Prescribed Form of Declaration of Interests

Declaration to the Secretary of Berkshire Healthcare NHS Trust Foundation Trust

I hereby declare that I am at the date of this declaration a member of the [Public/Staff] constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of the Constitution.

I declare that I have read and fully understood the Standing Orders for Governors.

I fully understand the requirements to declare interests as outlined within the Standing Orders for Governors.

(Please delete either one or two below)

1 I confirm that I have no current interest to declare.

2 I have the following interests to declare.

I agree to abide by the conditions outlined in the Standing Orders for Governors and to maintain updated information within the register of Governors interests as defined within the Standing Orders for Governors

Name Date.....

Signature.....

ANNEX 6

Standing Orders for the Practice and Procedure of the Board of Directors

(Paragraph 28)

1. Interpretation and Definitions

- 1.1 Save as otherwise permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he or she should be advised by the Chief Executive and Secretary).
- 1.2 Terms used in these Standing Orders have the meaning given to them in the Constitution.
- 1.3 Words importing the masculine gender include the feminine gender and vice versa.

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 a Trust.
- 2.4 The Trust has the functions conferred on it by the Regulatory Framework. Accountability for charitable Funds held on trust is to be made to the Charity Commission. Accountability for non-charitable Funds held on trust is only to NHSE.
- 2.5 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.
- 2.6 **Removal of the Chair and other Non-Executive Directors**
 - 2.6.1 Removal of the Chair or another Non-Executive Director shall require approval of three-quarters of the members of the Council of Governors.
- 2.7 **Appointment and Powers of Deputy-Chair**
 - 2.7.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors may appoint a Non-Executive Director to be Vice-Chair for such period, not exceeding the remainder of his term as Non-Executive Director of the Trust, as the Council of Governors may specify on appointing them.
 - 2.7.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chair in accordance with the provisions of SO 2.12.3.
 - 2.7.3 Where the Chair of the Trust has died or has ceased to hold office, or where he or she has been unable to perform their duties as Chair owing to illness, conflict of interest or any other cause, the Deputy-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these SOs shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy - Chair. Where both the Chair and Vice Chair 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 Chair.

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 the public, unless and to the extent that the Board of Directors has resolved that members of the public should be excluded from a meeting on the grounds that:
- (a)** any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - (b)** for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Board of Directors considers are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 3.1.2** The public and representatives of the press shall be afforded reasonable facilities to attend all public events or meetings of the Board of Directors, including the Annual General Meeting.
- 3.1.3** The Chair shall give such directions as he or she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted.
- 3.1.4** 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.

3.2 Calling Meetings

- 3.2.1** Ordinary meetings of the Board of Directors shall be held at such times and places and in such format as the Board of Directors may determine.
- 3.2.2** The Chair may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third 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 Chair does not call a meeting within 7 days after such requisition has been presented to them, at the Trust's Headquarters, 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 Board of Directors a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an Officer of the Trust authorised by the Chair to sign on his behalf, shall be delivered to every Director, or sent by post to the usual place of residence of every Director, so as to be available to them at least three Clear Days before the meeting.
- 3.3.2** In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.3.3** Want of service of the notice on any one member of the Board of Directors shall not affect the validity of a meeting.
- 3.3.4** 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 three 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 and supporting papers will be sent to members of the Board of Directors at least 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 posting and in the case of by electronic communication on the day it is sent.
- 3.4.2** Before each public meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the Agenda, shall be displayed at the Trust's Headquarters and on the Trust's website at least three Clear Days before the meeting.
- 3.4.3** Before holding a meeting, the Board of Directors will send a copy of the agenda (but not supporting papers) to the Council of Governors. The agenda sent to the Governors will include the business to be transacted in any private meeting of the Board of Directors.
- 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. (Such matters may be identified within these SOs).
- 3.5.2** A Director desiring a matter to be included on an Agenda shall make his request in writing to the Chair at least 14 Clear Days before the meeting, subject to SO3.3. The Chair shall include on the Agenda any matter contained in a request received at least 14 Clear Days before the meeting. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chair. 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 Chair shall include the petition as an item for the Agenda of the next Board of Directors meeting.
- 3.7 Chair of Meeting**
- 3.7.1** At any meeting of the Board of Directors, the Chair if present, shall preside. If the Chair is absent from the meeting the Vice Chair, if there is one and he or she is present, shall preside. If the Chair and Vice Chair are absent such Non-Executive Director (who is not also an Officer of the Trust) as the Directors present shall choose shall preside.
- 3.7.2** If the Chair is absent temporarily on the grounds of a declared conflict of interest the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, such Non-Executive Director (who is not also an Officer of the Trust) as the Directors present shall choose shall preside.
- 3.8 Chair's Ruling**
- 3.8.1** Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, 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 wishing to move or amend a motion shall send a written notice to the Chair.
- 3.9.2** The notice shall be delivered at least 14 Clear Days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these Standing Orders and the appropriate Regulations. Subject to SO 3.3.3, this Standing Order shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

3.10 Emergency Motions

- 3.10.1** Subject to the agreement of the Chair, and subject also to the provision of SO 3.11 'Motions: Procedure at and during a meeting', a Director of the Board 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 at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.11 Motions: Procedure at and during a meeting

3.11.1 Who may propose

- (a) A motion may be proposed by the Chair of the meeting or any Director of the Board present. It must also be seconded by another Director of the Board.

3.11.2 Contents of motions

- (a) The Chair may exclude from the debate at his 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.a.1 the reception of a report;

3.11.2.a.2 consideration of any item of business before the Board;

3.11.2.a.3 the accuracy of minutes;

3.11.2.a.4 that the Board proceed to next business;

3.11.2.a.5 that the Board adjourn;

3.11.2.a.6 that the question be now put.

3.11.3 Amendments to motions

- (a) A motion for amendment shall not be discussed unless it has been proposed and seconded.
- (b) Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board.
- (c) 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.

3.11.4 Rights of reply to motions

(a) Amendments

3.11.4.a.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.

(b) Substantive/original motion

3.11.4.b.1 The member of the Board 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

- (a) 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 Chair.

3.11.6 Motions once under debate

- (a) When a motion is under debate, no motion may be moved other than:
- 3.11.6.a.1** an amendment to the motion;
 - 3.11.6.a.2** the adjournment of the discussion, or the meeting;
 - 3.11.6.a.3** that the meeting proceed to the next business;
 - 3.11.6.a.4** that the question should be now put;
 - 3.11.6.a.5** the appointment of an 'ad hoc' committee to deal with a specific item of business;
 - 3.11.6.a.6** that a member be not further heard.
- (b) 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 Director who has not taken part in the debate and who is eligible to vote.
- (c) If a motion to proceed to the next business or that the question be now put, is carried, the Chair 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. Subject to paragraph 3.8, the mover of a motion shall have a maximum of five minutes to move and five minutes to reply. Once a motion has been moved, no Director shall speak more than once or for more than 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 six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors, and before considering any such motion of which notice shall have been given, the Board 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 Director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he or she considers it appropriate. This Standing Order 3.12.2 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** Except as stated otherwise in the constitution or these Standing Orders, 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 Chair of the meeting shall have a second or casting vote.
- 3.13.2** If the number of Non-Executive Directors (including the Chair) in a meeting of the Board of Directors is equal to the number of executive Directors, the Chair (and in his absence, the Deputy Chair), shall have a casting vote at meetings of the Board of Directors in accordance with these Standing Orders.
- 3.13.3** All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands or by appropriate electronic means. A paper ballot may also be used if a majority of the Directors present so request.
- 3.13.4** If at least one-third of the Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.
- 3.13.5** If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.13.6** In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.13.7** 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 Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting. Minutes shall be retained in the Chief Executive's office.
- 3.14.3** Board 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.
- 3.14.4** As soon as practicable after holding a meeting, the Board of Directors shall send a copy of the minutes of the meeting to the Council of Governors.

3.15 Suspension of Standing Orders

- 3.15.1** Any one or more of the Standing Orders 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 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 SOs are suspended.
- 3.15.5** The Audit Committee shall review every decision to suspend SOs.

3.16 Variation and Amendment of Standing Orders

- 3.16.1** These Standing Orders shall be amended only if:
 - (a) relevant notice of a meeting has been served in accordance with SO3.3.
 - (b) a notice of motion under SO 3.9 has been given.
 - (c) a majority of Non-Executive Director vote in favour of amendment.
 - (d) at least two-thirds of the Directors are present; and
 - (e) the variation proposed does not contravene the Regulatory Framework, or any other statutory provisions.

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 at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors are present including at least one Executive Director and one Non-Executive Director and the Chair.
- 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 SO7) he or she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the recommendations of the Appointments and Remuneration Committee)

3.19 Meetings: Electronic Communication

- 3.19.1** In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 3.19.2** A Director in electronic communication with the Chair 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 he or she has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 3.19.3** A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
- 3.19.4** 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 SO2.6 and such guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of SO 5.1 below or by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board of Directors considers appropriate. Delegated Powers are defined in a separate document (the Scheme of Delegation). That document has effect as if incorporated into these Standing Orders.
- 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 Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board 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.
- 4.4 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 he or she will perform personally and shall nominate Officers to undertake the remaining functions for which he or she will still retain accountability to the Board of Directors.
- 4.4.2** The Chief Executive shall prepare a Scheme of Delegation identifying his proposals, which shall be

considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may 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 the Finance Director or other Executive Director to provide information and advise the Board 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 Duty to Report Non-Compliance with Standing Orders

- 4.5.1** If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and staff 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 SO2.6 the Board of Directors may appoint committees of the Trust consisting wholly of Directors.
- 5.1.2** A committee appointed under SO5.1.1 may, subject to such guidance as may be given by the Board of Directors or other health service bodies in question, appoint sub-committees consisting wholly of Directors.
- 5.1.3** The SOs of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, in which case the term "Chair" is to be read as a reference to the Chair of the committee as the context permits, and the term "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 or sub-committee 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. Such terms of reference shall have effect as if incorporated into the SOs.
- 5.1.5** Where committees are authorised to establish sub-committees, they may not delegate Executive powers to the sub-committee 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. 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** The Board may also operate as a committee in accordance with SO 4.3.2. Any decisions taken by the Board in Committee (i.e., Seminar meeting of the Board) must be brought to the next meeting of the Board.

5.2 Confidentiality

- 5.2.1** A member of a committee shall not disclose a matter dealt with, by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 5.2.2** A Director or a member of a 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 information as to the Trust's forward planning in respect of each financial year to be given to NHSE.
- 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 reports shall give information on:
 - 6.4.1** the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the principal purpose.
 - 6.4.2** 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; and
 - 6.4.3** any exercise by the Council of Governors of its power to require a Director to attend a meeting.
 - 6.4.4** the Trust's policy on pay, on the work of the committee of Non-Executive established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors, and on such other procedures as the Trust has on pay.
 - 6.4.5** the remuneration of the Directors and on the expenses of the Governors and the Directors; and
 - 6.4.6** any other information NHSE requires.
- 6.5** The Trust shall comply with any decision NHSE makes as to:
 - 6.5.1** the form of the reports.
 - 6.5.2** when the reports are to be sent to it; and
 - 6.5.3** the periods to which the reports are to relate.
- 6.6** 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 39 and/or 40 of the Constitution is included on the Agenda for a meeting of the Board of Directors.
- 6.7** 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 Chair at least 14 Clear Days before the meeting of the Board of Directors, subject to SO 3.3. The Chair shall decide whether the matter is appropriate to be included on the Agenda. Requests made less than 14 Clear Days before a meeting may be included on the Agenda at the discretion of the Chair.

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 actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved or likely to be involved in making as described in Standing Orders 7.7.2 and 7.7.7; and
 - 7.1.2** any actual or potential, direct or indirect, non-financial professional interest which is material to any

discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 7.7.4 and 7.7.7; and

- 7.1.3** any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Order 7.7.5 and 7.7.7.
- 7.2** All existing members of the Board of 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 Clear Days of becoming aware of the existence of a material interest.
- 7.4** 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, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and the Chair shall then decide what action to take. This may include excluding the Director from discussions on the matter and/or prohibiting the Director from voting on any question with respect to the matter. Subject to Standing Orders 7.7.3 and 7.7.4, if a Director has declared a financial interest (as described in Standing Order 7.7.2) he or she shall not take part in the consideration or discussion of the matter.
- 7.5** Any interest declared at a meeting of the Board of Directors and any subsequent action taken, should be recorded in the minutes of the Board of Director's meeting at which the interest was declared. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 7.6** Directors' interests will be disclosed in the Trust's Annual Report, at least to comply with the Financial Reporting Manual as published by NHSE, but the Annual Report may also refer to the published declaration of interests of Directors.
- 7.7 Nature of Interests**
- 7.7.1** Interests which should be regarded as "material" are ones which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by NHSE.
- 7.7.2** A financial interest is where a Director may receive direct financial benefits (by either making a gain or avoiding a loss) from the consequences of a decision of the Trust. This could include:
- (a)** directorships, including Non-Executive Directorships held in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
 - (b)** employment in an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
 - (c)** a shareholding, partnerships, ownership or part ownership of an organisation which is doing or is likely to do business with an organisation in receipt of NHS funding.
- 7.7.3** A Director shall not be treated as having a financial interest in any matter by reason only:
- (a)** of shares or securities held in collective investment or pensions funds or units of authorised unit trusts; or
 - (b)** of an interest in any company, body or person with which he or she is 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 matter.
- 7.7.4** Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of

Schedule 7 of the 2006 Act shall not be treated as a financial interest for the purpose of this SO.

- 7.7.5** A non-financial professional interest is where a Director may obtain a non-financial professional benefit from the consequence of a decision that the Trust makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a Director is:
- (a) an advocate for a particular group of patients; or
 - (b) a clinician with a special interest; or
 - (c) an active member of a particular specialist body; or
 - (d) an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.
- 7.7.6** A non-financial personal interest is where a Director may benefit personally from a decision that the Trust makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where the Director is:
- (a) a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or
 - (b) a member of a lobbying or pressure group with an interest in health and/or social care.
- 7.8** A Director will be treated as having an indirect financial interest, non-financial professional interest or non-financial personal interest where he or she has a close association with another individual who has a financial interest, a non-financial professional interest, or a non-financial personal interest who would stand to benefit from a decision of the Trust. This includes material interests of:
- 7.8.1** close family members and relatives, including a spouse, partner, parent, child or sibling.
 - 7.8.2** close friends and associates; and
 - 7.8.3** business partners.
- 7.9** If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chief Executive. 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.
- 7.10** 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 he or she is also a Director).
- 7.11 Register of Interests**
- 7.11.1** The Register of Interests shall contain the names of each Director, whether he or she has declared any interests and, if so, the interests declared in accordance with the Constitution or these SOs.
 - 7.11.2** The Secretary must amend the appropriate Register of Interests within 3 Clear Days of receipt of a declaration of a material interest made under SO 7.3.
 - 7.11.3** The Register of Interests will be available to the public and the Chair will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register of Interests 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.
 - 7.11.4** In establishing, maintaining, updating and publicising the Register of Interests, the Trust shall comply with all guidance issued from time to time by NHSE. The details of Directors' interests recorded in the Register of Interests will be kept up to date by means of a regular review as necessary of the Register of Interests 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 shall at all times act in accordance with the NHSE Code of Governance for NHS Provider Trusts ("Code of Governance"). This section of SOs should be read in conjunction with the Code of Governance.

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

- 8.2.1** Canvassing of Directors or members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these SOs shall be included in application forms or otherwise brought to the attention of candidates.

- 8.2.2** 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.

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

8.3 Relatives of Directors or Officers

- 8.3.1** 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.

- 8.3.2** The Directors and every member and Officer of the Trust shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that member or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

- 8.3.3** On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board whether they are related to any other member of the Board of Directors or holder of any office in the Trust.

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

8.4 External Consultants

- 8.4.1** SO8 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

9. Tendering and Contract Procedure

9.1 Duty to comply with Standing Orders

- 9.1.1** The procedure for making all contracts by or on behalf of the Trust shall comply with these SOs (except where SO 3.15 is applied).

9.2 Public Procurement

- 9.2.1** The Procurement Act, the PSR Regulations and the Regulatory Framework shall take precedence over these SOs with regard to procedures for awarding all forms of contracts and shall have effect as if incorporated in these SOs.

- 9.2.2** The Trust shall comply as far as is practicable with the requirements of the NHSE capital investment and property business guidance and the NHSE Capital Guidance in respect of capital investment and estate and property transactions. In the case of management consultancy contracts, the Trust shall comply with NHSE guidance on Consultancy spending approval criteria for providers.

9.2.3 The Tendering and Contract Procedure is governed by 3 ranges of expenditure (refer to the Scheme of Delegation):

- (a) Formal Competitive Tendering details are contained in SO 9.3.
- (b) Competitive Quotations details are contained in SO9.4.1-9.4.; and
- (c) Expenditure where Tendering or Competitive Quotations are not required (details are contained in SO10).

9.3 Formal Competitive Tendering

9.3.1 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; for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.

9.3.2 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in (9.3.2.5) to (9.3.2.8) below) where:

- (a) the estimated expenditure does not, or is not reasonably expected to, exceed £25,000 (this figure to be reviewed annually) and does not fall within the scope of the PSR Regulations; or
- (b) the estimated expenditure is expected to exceed £25,000 (this figure to be reviewed annually) but does not, or is not reasonably expected to exceed the applicable threshold for the purchase under the Procurement Act and does not fall within the scope of the PSR Regulations; or
- (c) by virtue of Part 1 of the Procurement Act or Part 2 of the PSR Regulations, the contract does not require a competitive tendering process; or
- (d) the timescale genuinely precludes competitive tendering (and this complies with any applicable provisions of the Procurement Act or PSR Regulations). Failure to plan the work properly is not a justification for single tender; or
- (e) after considering the specification, specialist expertise is required and is available from only one source (and this complies with any applicable provisions of the Procurement Act or PSR Regulations); or
- (f) 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 (and this complies with any applicable provisions of the Procurement Act or PSR Regulations); or
- (g) where provided for in the NHSE capital investment and property business guidance.

9.3.3 The limited application of the single tender rules should not be used to avoid competition or for administrative convenience.

9.3.4 Where it is decided that competitive tendering is not applicable and should be waived by virtue of 9.3.2 above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Board of Directors in a formal meeting and the applicable provisions of the Procurement Act or PSR Regulations complied with.

9.3.5 The Board of Directors shall review the Tendering Procedure not less than every two years.

9.4 Quotations

9.4.1 Quotations are required where formal tendering procedures are waived under SO 9.3.2, the proposed contract falls outside the scope of the Procurement Act or PSR Regulations and the intended expenditure or income exceeds or is reasonably expected to exceed the limits defined in the Scheme of Delegation.

9.4.2 Where quotations are required under SO 9.4.1 they should 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.

- 9.4.3** Quotations should be in writing unless the Chief Executive or his Nominated Officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 9.4.4** All quotations must be treated as confidential and should be Retained for inspection.
- 9.4.5** The Chief Executive or his Nominated Officer should evaluate the quotations and select the one which gives value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record and approved by the Chief Executive and the Chief Financial Officer.
- 9.4.6** Non-competitive quotations in writing may be obtained for the following purposes:
- (a) the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or his Nominated Officer, possible or desirable to obtain competitive quotations.
 - (b) the goods/services are required urgently. The approval of the Director of Finance or their Nominated Officer will be required for this course of action.
- 9.4.7** Where tenders or quotations are not required, because expenditure is below the limits set in the Scheme of Delegation, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board of Directors.
- 9.4.8** The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board of Directors may also determine from time to time that in house services should be market tested by competitive tendering (SO11).

9.5 Private Finance

9.5.1 When the Board of Directors proposes, or is required, to use finance provided by the private sector the following should apply:

- (a) 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.
- (b) 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.
- (c) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

9.6 Contracts (including lease contracts)

9.6.1 The Trust may only enter into contracts within its statutory powers and shall comply with:

- (a) these SOs.
- (b) the Trust's SFIs.
- (c) all applicable statutory provisions; and
- (d) any relevant directions including the Capital Investment Manual and guidance on the Procurement and Management of Consultants.
- (e) Where required by the Procurement Act or PSR Regulations contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

9.6.2 Contracts shall include lease and hire purchase agreements.

9.6.3 In all contracts made by the Trust, the Board shall endeavour to obtain value for money. The Chief Executive shall nominate an Officer who shall oversee and manage each contract on behalf of the Trust.

9.7 Personnel and Agency or Temporary Staff Contracts

9.7.1 The Chief Executive shall nominate Officers with delegated authority to enter into contracts for the employment of other Officers, to authorise regarding of staff, and enter into contracts for the employment of agency staff or temporary staff service contracts.

9.8 Healthcare Services Agreements

9.8.1 Healthcare Services contracts made between two NHS organisations for the supply of healthcare services, will be legally binding contracts based on the models issued by NHSE.

9.8.2 The Chief Executive shall nominate Officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.

9.9 Cancellation of Contracts

9.9.1 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:

- (a) the contractor shall have 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
- (b) for showing or forbearing to show 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 his behalf (whether with or without the knowledge of the contractor); or
- (c) if in relation to any contract with the Trust the contractor or any person employed by them or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1989 and 1916, the Bribery Act 2010, and other appropriate legislation.

9.9.2 Where a contract is subject to the Procurement Act or the PSR Regulations, that contract shall also include any termination clauses required by the applicable legislation.

9.10 Determination of Contracts for Failure to Deliver Goods or Material

9.10.1 There shall be inserted in every written contract for the supply of goods or materials 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 (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered.

9.10.2 The clause referred to at 9.10.1 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.

9.11 Contracts Involving Funds held on Trust

9.11.1 Contracts involving Funds held on Trust shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

10. Disposals

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

- 10.1.1** 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 his Nominated Officer.
- 10.1.2** obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust.
- 10.1.3** items to be disposed of with an estimated sale value of less than £1,000, this figure to be reviewed annually.
- 10.1.4** items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract.
- 10.1.5** land or buildings concerning which DHSC or NHSE guidance has been issued but subject to compliance with such guidance; or
- 10.1.6** any matter which NHSE has issued alternate specific guidance in relation to.

11. In-House Services

- 11.1** In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
 - 11.1.1** Specification group, comprising the Chief Executive or Nominated Officer(s) and specialist(s).
 - 11.1.2** In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
 - 11.1.3** Evaluation group, comprising normally a specialist Officer, a supplies Officer and a Finance Director representative. For services having a likely annual expenditure exceeding £500,000, a non-Officer member should be a member of the evaluation team.
- 11.2** All groups 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.
- 11.3** The evaluation group shall make recommendations to the Board of Directors.
- 11.4** The Chief Executive shall nominate an Officer to oversee and manage the contract.

12. Custody of Seal and Sealing of Documents

12.1 Custody of Seal

- 12.1.1** The Common Seal of the Trust shall be kept by the Chief Executive or Nominated Officer in a secure place.

12.2 Sealing of Documents

- 12.2.1** 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.
- 12.2.2** Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (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).

12.3 Register of Sealing

- 12.3.1** 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.

13. Signature of Documents

- 13.1** 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 shall have given the necessary authority to some other person for the purpose of such proceedings.
- 13.2** 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.
- 13.3** Where authority to sign documents is granted under the Constitution, signatures may be electronic, provided that, where required by law or a regulatory body wet ink signatures shall be used. For the avoidance of doubt, unless and until the Trust is able to electronically seal documents, documents signed under seal will continue to be signed by way of wet ink.

14. Miscellaneous

14.1 Standing Orders to be given to members and officers

- 14.1.1** 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 Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated Officers shall be informed in writing and shall receive copies where appropriate of SOs.

14.2 Documents having the standing of Standing Orders

- 14.2.1** Standing Financial Instructions and the Scheme of Delegation shall have the effect as if incorporated into SOs.

14.3 Review of Standing Orders

- 14.3.1** Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

- 14.4 Corporate Documents** – Specific to the setting up of the Trust shall be held in a secure place by the Chief Executive.

15. Variation Schedule

Subject	Approved by Monitor	Ref:
Reduction in quoracy at Governor meetings	10 Feb 2009	Paul Streat
Removal of Patient/Carer Membership Constituency	21 January 2010	Lizzie Alabaster
Revision reflecting TCS transaction – April 2011	May 2011	Paul Streat
Revision reflecting change of partnership organisation – removal of Stroke Association and inclusion of The Ark Trust	October 2011	Paul Streat
Revision to reflect October 2012 changes arising from Health & Social Care Act 2012	November 2012	Hitesh Patel

Subject	Approved by Directors	Approved by Governors
Revision to reflect April 2013 changes arising from Health & Social Care Act 2012 (May 2013)	14 May 2013	16 May 2013

Revision reflecting change of partnership organisations – removal of the Ark Trust and Berkshire Association of Clubs for Young People and inclusion of AgeUK Berkshire and University of West London	10 September 2013	19 September 2013
Revisions following general review and to incorporate specific requested amendments	14 April 2015	20 May 2015
Revisions to ensure on going compliance	10 July 2018	20 June 2018
Revisions to ensure on going compliance and an excluded member review process	13 December 2022	07 December 2022
Revisions to align with the Procurement Act	July 2025	June 2025