



Chesterfield Royal Hospital
NHS Foundation Trust



Constitution

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I Definitions:

I.1 In this Constitution

" the 2006 Act"	means the National Health Service Act 2006 and other Acts that may be introduced from time to time.
"the 2012 Act"	means the Health and Social Care Act 2012.
"Accounting Officer"	means the person who from time to time discharges the function specified in section 25(5) of schedule 7 to the 2006 Act.
"Annual Accounts"	refers to the annual financial accounts and annual quality accounts of the Trust.
"Area (of the Trust)"	means the area consisting of all the areas specified in Annex I as an area for a Public Constituency.
"Board of Directors"	means the board of directors of the Trust as constituted in accordance with the terms of this Constitution.
"CCG Governor"	means a member of the Council of Governors appointed by one or more clinical commissioning groups whose area includes the whole or part of the Area of the Trust.
"Chairman"	means the Chairman of the Board of Directors and the Council of Governors.
"Chief Executive"	means the chief executive officer of the Trust appointed in accordance with the terms of this Constitution.
"Class"	means a Class of membership within the Staff Constituencies as set out in section 4(3) of schedule 7 to the 2006 Act.
"Constitution"	means this Constitution and all annexes to it.
"Council of Governors"	means the Council of Governors as constituted in accordance with this Constitution.
"Deputy Chairman"	means <ol style="list-style-type: none">in relation to the Council of Governors – a Public Governor appointed as a Deputy Chairman by the Council of Governors who will preside over a meeting of the Council of Governors when the Chairman is absent from the meeting or when the Chairman declares a conflict of interest which precludes him from presiding as Chairman at the meeting;in relation to the Board of Directors – a Non-Executive Director appointed as Deputy Chairman by the Council of Governors who will preside over a meeting of the Board of Directors when the Chairman is absent or when the Chairman declares a conflict of interest which precludes him from presiding as Chairman at that meeting.
"Director"	means a member of the Board of Directors.

“Education Governor”	means a member of the Council of Governors appointed by the Universities of Sheffield and Derby as partnership organisations because they do not fall within section 9(6) of schedule 7 to the 2006 Act.
“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.
“Executive Director”	means an Executive Director of the Board of Directors including the Chief Executive where the context so permits.
“Financial Year”	means each successive period of twelve months beginning with 1 April.
“Governor”	means a Member of the Trust elected or appointed as a member of the Council of Governors, according to the arrangements applicable to that Class of membership of the Council.
“Health Service Body”	means a body referred to in section 65(1) of chapter 5 part 2 of the 2006 Act.
"Licence"	means the Trust's licence granted by Monitor under the 2012 Act.
“Local Authority Governor”	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the Area of the Trust.
"Member"	means a Member of the Trust.
"Monitor"	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
“Non-Executive Director”	means a Non-Executive Director of the Board of Directors including the Chairman where the context so permits.
“NDVA”	means the co-ordinating body for voluntary organisations serving Derbyshire.
“Partnership Governor”	means a member of the Council of Governors appointed by partnership organisations, i.e. the Universities of Sheffield and Derby, NHS North Derbyshire Commissioning Group, NHS Hardwick Clinical Commissioning Group, local authorities and the voluntary sector.
“Public Constituency”	means those constituencies referred to in Annex I and “Public Constituency” shall mean each of those Constituencies singly and all of them collectively.
“Public Governor”	means a member of the Council of Governors elected by the Members of the Public Constituency.
Safeguarding Registers	means the registers maintained for the purposes of section 1 of the Protection of Children Act 1999, part 7 of the Care Standards Act 2000 and part II of the Sexual Offences Act 2003, and the List maintained under part 8 of the Education Act 2002; or the successive arrangements to the foregoing to be made pursuant to the Safeguarding of Vulnerable Groups Act 2006.
"Secretary"	means the Director of Corporate Administration or any other person appointed to perform the duties of secretary to the Trust, including a joint, assistant or deputy secretary, hereinafter to be referred to as the Secretary.

“Senior Independent Director” (SID)	means the independent Non-Executive Director who is available to Directors and Governors if they have concerns which contact with the Chairman has failed to resolve or for which such contact is inappropriate; and who may also be the Deputy Chairman of the Board of Directors.
“Staff Constituency”	means that part of the Trust’s membership consisting of the staff of the Trust and which is divided into the Classes as provided for in this Constitution.
“Staff Governor”	means a member of the Council of Governors elected by the members of the relevant Class within the Staff Constituency in accordance with the provisions of this Constitution.
“Trust”	means Chesterfield Royal Hospital NHS Foundation Trust.
“Voluntary Sector Governor”	means a member of the Council of Governors appointed by the voluntary sector.

- 1.2 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.3 References in this Constitution to legislation include all amendments, replacements, or re-enactments made, and all regulations, statutory guidance or directions.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 Words importing the masculine gender shall include the feminine gender and words importing the singular shall include the plural and vice-versa.
- 1.6 References in this Constitution to paragraphs are to paragraphs in this Constitution.

2 Name

- 2.1 The name of this Trust is to be “Chesterfield Royal Hospital NHS Foundation Trust”.

3 Principal purpose

- 3.1 The Trust’s principal purpose is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

4 Other Purposes

- 4.1 The Trust may provide goods and services for any purposes related to:
- 4.1.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
- 4.1.2 the promotion and protection of public health.

- 4.2 The Trust may also carry on activities other than those mentioned in paragraph 4.1 above for the purpose of making additional income available in order better to carry out its principal purpose.
- 4.3 The profits or surpluses of the Trust are not to be distributed (either directly or indirectly) amongst Members.
- 4.4 The Trust shall exercise its functions effectively, efficiently and economically.

5 Powers

- 5.1 The Trust is to have all the powers of an NHS Foundation Trust as provided for in the 2006 Act, subject to any restrictions in its Licence. In fulfilling its objectives, the Trust may exercise all the statutory and other powers available to it.
- 5.2 Without prejudice to the generality of those powers, the Trust may in particular:
- 5.2.1 provide hospital and other accommodation for the purposes of any of its activities;
 - 5.2.2 acquire and dispose of property;
 - 5.2.3 accept gifts of property (including property to be held on trust for the purposes of the Trust or for any purpose relating to health services);
 - 5.2.4 employ staff;
 - 5.2.5 enter into contracts;
 - 5.2.6 provide the services of medical, dental, midwifery and nursing staff, other health care professionals, other staff and volunteers;
 - 5.2.7 borrow money for the purposes of, or in connection with, its functions, subject to any restrictions imposed by Monitor;
 - 5.2.8 provide such other facilities for the care of expectant and nursing mothers and young children as it considers appropriate;
 - 5.2.9 provide such facilities for the prevention of illness, the care of persons suffering from illness and the aftercare of persons who have suffered from illness as it considers appropriate;
 - 5.2.10 provide such other services as it considers are required for the diagnosis and treatment of illness and the care of those suffering from illness;
 - 5.2.11 conduct, or assist, by grants or otherwise, any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness and into any such other matters connected with any service provided by the Trust as it considers appropriate and publish the results of such research;
 - 5.2.12 educate and train its own staff and students and those from other organisations or educational establishments in any trade, profession or other occupation relevant or related to any part of the Trust's functions and collaborate with other organisations in the provision of such education and training;

- 5.2.13 provide goods and services in England;
 - 5.2.14 provide, or assist in providing, information, training and support to voluntary and community bodies within the Area of the Trust or in providing services within the Area of the Trust;
 - 5.2.15 invest money (other than money held by it as a trustee) for the purpose of or in connection with its functions;
 - 5.2.16 give financial assistance (whether by way of a loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions;
 - 5.2.17 raise charitable funds and, in so doing, appeal for any contribution, donation, grant or gift of money or property;
 - 5.2.18 provide and participate in external quality assurance schemes;
 - 5.2.19 carry out investigations into any aspect of the activities of the Trust; and
 - 5.2.20 in fulfilling its statutory duty to co-operate with another body, provide to that body, and receive from it, goods and services on such terms as the Trust considers appropriate, including terms under which the goods or service are provided or received free of charge.
- 5.3 Any power of the Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including payable by way of compensation for loss of employment or loss or reduction in pay).

6 Framework

6.1 The following paragraphs describe the arrangements for supporting the governance arrangements within the Trust and set out the respective roles of the Members, Governors and Directors.

6.2 Members

- 6.2.1 Members may vote at the Elections to the Council of Governors. They may take part in consultation and opinion testing exercises conducted by the Trust, and attend open meetings of the Trust.
- 6.2.2 A Member can stand for Election to the Council of Governors.
- 6.2.3 A Member will receive care and treatment in the Trust on exactly the same basis as any other NHS patient (that is, whether they are a Member or not).
- 6.2.4 Members will not be required to pay a subscription.
- 6.2.5 The Council of Governors may ask Members for their views.
- 6.2.6 Members of the Public Constituency are eligible for appointment as Non-Executive Directors, including appointment as the Chairman.

6.3 Council of Governors

- 6.3.1 The Trust has a Council of Governors and it consists of Public Governors, Staff Governors, CCG Governors, Local Authority Governors, Education Governors, and Voluntary Sector Governors.
- 6.3.2 The Council of Governors will have the roles and responsibilities set out in paragraph 8 of this Constitution.
- 6.3.3 Public Governors shall be elected by the Members of the Public Constituency as provided for in paragraph 8.4 and Staff Governors shall be elected by the Classes of the Staff Constituency as provided for in paragraph 8.5. Other Governors will be appointed in accordance with the provisions of paragraph 8.6 to 8.10 of this Constitution.
- 6.3.4 All Governors, in discharging their roles and responsibilities under the 2006 Act and under this Constitution, shall act at all times in the best interests of the Trust.

6.4 Board of Directors

- 6.4.1 The Trust shall be managed by the Board of Directors, who shall exercise all the powers of the Trust subject to any contrary provisions of the 2006 Act as given effect by this Constitution
- 6.4.2 The Board of Directors will have the roles and responsibilities set out in paragraph 9 of this Constitution.

6.5 General provision

- 6.5.1 Any dispute or complaint arising from the application of the procedures set out in the Constitution, or any aspect of the membership or Election arrangements for the Trust will be resolved by the Secretary, in consultation with the Chairman and Chief Executive.

7 Membership

- 7.1 The Trust is to have two membership constituencies, namely
- a) A Public Constituency (comprising six separate Public Constituencies); and
 - b) A Staff Constituency (comprising four Classes).
- 7.2 A person who is a Member of a Constituency, or of a Class within that Constituency, may not (while that membership continues), be a Member of any other Constituency or Class.
- 7.3 A person may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a Member of a Class of the Staff Constituency in accordance with paragraph 7.5 below.
- 7.4 Where a person applies to become a Member, the Trust shall consider his application for membership as soon as reasonably practicable following its receipt and unless that person is ineligible or is disqualified from membership, the Secretary shall cause his name to be entered forthwith in the register of Members and that person shall there upon become a Member.

7.5 Where a person is invited by the Trust to become a Member of a Class of the Staff Constituency in accordance with paragraph 7.8.1, that person shall automatically become a Member and shall have their name entered on the register of Members unless within the period specified in the said invitation, that person has informed the Trust that he does not wish to become a Member.

7.6 Any person shall become a Member on the date upon which his name is entered on the register of Members and that person shall cease to be a Member upon the date on which his name is removed from the register of Members as provided for in this Constitution.

7.7 Public Constituency

7.7.1 There are six Public Constituencies, each based on a local authority area, as set out in Annex I. Each Public Constituency is to be known by the name listed in Annex I. Members of the Trust who are Members of any of the Public Constituencies listed in Annex I are to be persons:

- a) who live in that area of the Public Constituency as set out in Annex I and whose names appear on the electoral roll for their place of residence which shall be within that said area,
- b) who are not members of any other Constituency and are not otherwise disqualified from membership under paragraph 7.9, and
- c) who have made an application for membership to the Trust.

7.7.2 Membership of a Public Constituency is available to persons who satisfy the criteria at 7.7.1. The Trust is to ensure as far as reasonably practicable, taken as a whole, that the actual membership of each of the Trust's Public Constituencies is representative of those eligible for membership.

7.7.3 In deciding which areas are to be areas for the Public Constituencies, the Trust will have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services.

7.7.4 The minimum number of Members required for each Public Constituency is given in Annex I.

7.8 Staff Constituency

7.8.1 Members of the Staff Constituency are to be persons:

- a) who hold an employment contract with the Trust, and
- b) who satisfy the minimum duration requirements set out in paragraph 3(3) of schedule 7 to the 2006 Act (that is, that they have been continuously employed by the Trust for at least 12 months or are employed under a contract of employment with the Trust which is either without term or has a fixed term of at least 12 months), and

- c) who have been invited by the Trust to become Member of the relevant Class of the Staff Constituency and have not, within a period of 14 days commencing with the date of the said invitation, notified the Trust in writing that they do not wish to become a Member.

7.8.2 The Staff Constituency is divided into four Classes as follows:

- a) Medical and Dental Class
- b) Nursing and Midwifery Class
- c) Allied Health Professionals, Pharmacists and Scientists Class
- d) All Other Staff Class

7.8.3 The members of the Medical and Dental Class are individuals who are Members of the Staff Constituency and who are fully registered within the meaning of the Medicines Act 1983 or the Dentists Act 1984 (as shall be the case). For the avoidance of doubt the Medical and Dental Class shall also include junior doctors who are not yet fully registered within the meaning of the Medicines Act 1983, who otherwise meet the criteria in paragraph 7.8.1.

7.8.4 The Members of the Nursing and Midwifery Class are persons who are Members of the Staff Constituency and who are registered nurses or registered midwives.

7.8.5 The members of the Allied Health Professionals, Pharmacists, and Scientists Class are Members of the Staff Constituency (other than registered nurses or midwives) whose regulatory body falls within the remit of the Council for Healthcare Regulatory Excellence established by section 25 of the NHS Reform and Health Care Professionals Act 2002, but excluding any staff (except biomedical scientists) who fall within the former Whitley Council grouping known as 'Professional and Technical B'.

7.8.6 The members of the All Other Staff Class are Members of the Staff Constituency other than those defined at paragraphs 7.8.3 to 7.8.5.

7.8.7 A person who is eligible to be a Member of the Staff Constituency may not become or continue to be a Member of any Class or Constituency other than the Staff Constituency and may not become or continue to be a Member of more than one Class.

7.8.8 The minimum number of Members required for each Class of the Staff Constituency is as follows:

- a) Medical and Dental Class - 20 members
- b) Nursing and Midwifery Class - 100 members
- c) Allied Healthcare Professionals, Pharmacists and Scientists Class - 50 members
- d) All Other Staff Class - 100 members

7.9 [Disqualification from membership](#)

7.9.1 A person is disqualified from being a Member of the Trust if:

- a) he is under the age of 16, or
- b) he does not live within the Area of the Trust.

7.9.2 It is the responsibility of each Member, not the Trust, to ensure his eligibility, but the Secretary will take reasonable steps to verify eligibility from the information collected through membership registrations, and where the Trust is on notice that a member may have ceased to be eligible for membership, the Secretary shall carry out all reasonable enquires to establish if this is the case.

7.10 Termination of membership

7.10.1 A Member shall cease to be a Member if he:

- a) resigns by notice to the Secretary;
- b) ceases to fulfil the requirements of paragraph 7.7 or 7.8;
- c) becomes disqualified from membership by reason of paragraph 7.9.1(b)

7.11 Voting at governor Elections

7.11.1 A person may not vote at an Election for a Public Governor unless at the time of voting he has made a declaration in the specified form that he is a Member of the Public Constituency.

7.11.2 In relation to the Public Constituency, it is an offence, under section 60(6) of the 2006 Act, to knowingly or recklessly make such a declaration that is false in a material particular.

7.11.3 A person entitled to vote for a Staff Governor shall make a similar declaration to that at 7.11.1 above save that paragraph 7.11.2 will not apply in such a case.

8 Council of Governors

8.1 The Council of Governors shall comprise 30 Governors and the Chairman shall preside. More than half the Council of Governors must be from the Public Constituency.

8.2 Only persons elected or appointed under the provisions of paragraphs 8.4, 8.5, 8.7, 8.8, 8.9 and 8.10 may serve as members of the Council of Governors. The composition of the Council of Governors shall be as follows:

- a) 17 Public Governors elected in accordance with paragraph 8.4;
- b) 4 Staff Governors to be elected - one from each Class of the Staff Constituency - in accordance with paragraph 8.5;
- c) 2 CCG Governors appointed in accordance with paragraph 8.7;
- d) 3 Local Authority Governors appointed in accordance with paragraph 8.8;
- e) 2 Education Governors appointed in accordance with paragraph 8.9;

f) 2 Voluntary Sector Governors appointed in accordance with paragraph 8.10.

8.3 The normal term of office for a governor is three years. However, the Trust may specify a shorter duration of appointment or re-appointment for an elected or appointed Governor in order to:

- a) Secure the continuity of council membership;
- b) Align the starting and finishing dates of appointment;

- provided this is done in advance of the election or the appointment.

8.4 Public Governors

8.4.1 Members of the Public Constituency may elect any of their number to be a Public Governor from within their Constituency in accordance with the Election Scheme.

8.4.2 The Election Scheme current at the date of the Trust's authorisation is set out in Annex 2. A subsequent variation to the Election rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 20 of the Constitution.

8.4.3 Members of the Public Constituency may stand for Election as a Public Governor for that Public Constituency.

8.4.4 If contested, the Election must be by secret ballot.

8.4.5 A member of the Public Constituency standing for Election as a Public Governor must make a declaration as to his eligibility in accordance with section 60(2) of the 2006 Act. Under section 60(6) of the 2006 Act it is an offence to knowingly or recklessly make a declaration which is false in a material particular.

8.4.6 A Public Governor:

- a) shall hold office for a period of three years;
- b) is eligible for re-election at the end of that period;
- c) can be re-elected on two subsequent occasions but may serve no more than a maximum of nine years;
- d) ceases to hold office if he ceases to be a member of the Trust.

8.5 Staff Governors

8.5.1 Members of a Class of the Staff Constituency may elect any of their number to be a Staff Governor from within their Class according to the Election Scheme. The Election Scheme is set out in Annex 2.

8.5.2 Members of the Staff Constituency may stand for Election as a Staff Governor.

8.5.3 If contested, the Election must be by secret ballot.

8.5.4 Under section 60(6) of the 2006 Act it is an offence to knowingly or recklessly make a declaration, which is false in a material particular.

8.5.5 A Staff Governor:

- a) shall hold office for up to three years;
- b) is eligible for re-election at the end of that period;
- c) can be re-elected on two subsequent occasions but may serve no more than a maximum of nine years;
- d) ceases to hold office if he ceases to be a Member of the Trust.

8.6 Partner Governors

8.6.1 The arrangements by which the organisations referred to at paragraphs 8.2(c) to 8.2(f) may appoint members of the Council of Governors are described in paragraphs 8.7 to 8.10.

8.6.2 If and to the extent that an organisation referred to at paragraphs 8.2(c) to 8.2(f) fails to make an appointment within three months of being invited to do so by the Trust, the Trust may seek an appointment from an alternative organisation which in the Trust's opinion has similar objects or provides similar goods or services to the organisation for which it shall stand in substitution.

8.7 CCG Governors

8.7.1 CCG Governors are to be appointed by NHS North Derbyshire Commissioning Group and NHS Hardwick Clinical Commissioning Group, through a process agreed with the Secretary. Each CCG will appoint one CCG Governor.

8.7.2 A CCG Governor:

- a) shall hold office for a period of up to three years;
- b) is eligible for appointment at the end of that period;
- c) can be reappointed on two subsequent occasions but may serve a maximum of nine years;
- d) ceases to hold office if the CCG which has appointed him withdraws its appointment of him.

8.8 Local Authority Governors

8.8.1 Derbyshire Local Government Association (or any alternative body notified to the Trust for this purpose) will at the request of the Trust coordinate the appointment of three Local Authority Governors to represent those Local Authorities listed in Annex 3 in accordance with the provisions of that Annex and a process of appointment agreed with the Secretary.

8.8.2 A Local Authority Governor:

- a) shall hold office for a period of up to three years;
- b) is eligible for appointment at the end of that period;
- c) can be reappointed on two subsequent occasions but may serve a maximum of nine years;
- d) ceases to hold office if a Local Authority which has appointed him withdraws its appointment of him.

8.9 Education Governors

8.9.1 Education Governors are to be appointed by the Universities of Sheffield and Derby, in accordance with a process agreed with the Secretary. Each University will appoint one Education Governor.

8.9.2 An Education Governor:

- a) shall hold office for a period of up to three years;
- b) is eligible for appointment at the end of that period;
- c) can be reappointed on two subsequent occasions but may serve a maximum of nine years;
- d) ceases to hold office if a University which has appointed him withdraws its appointment of him.

8.10 Voluntary Sector Governors

8.10.1 NDVA will appoint two Voluntary Sector Governors in accordance with a process of appointment agreed with the Secretary.

8.10.2 A Voluntary Sector Governor:

- a) shall hold office for a period of up to three years;
- b) is eligible for appointment at the end of that period;
- c) can be reappointed on two subsequent occasions but may serve a maximum of nine years;
- d) ceases to hold office if a voluntary organisation which has appointed him withdraws its appointment of him.

8.11 Disqualification from being a Governor

8.11.1 A person may not become a Governor (and if already holding office shall immediately cease to do so) if:

- a) he is a Director of the Trust or a Governor or Director of another NHS Foundation Trust;

- b) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- c) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- d) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- e) he has in the preceding ten years been dismissed by the Trust, its predecessor or another organisation on any grounds other than redundancy or ill health;
- f) his name has been placed on a Safeguarding Register in connection with the protection of children and vulnerable adults or with sexual offences.

8.11.2 Where a person appointed as a Governor becomes disqualified from serving in that capacity by virtue of paragraph 8.11.1, he shall notify the Secretary in writing without delay.

8.12 Eligibility, termination of office and removal of Governors

8.12.1 A person holding office as a Governor shall cease to do so if:

- a) he resigns by giving notice in writing to the Secretary
- b) in the case of a Public Governor he ceases to be a Member of the Public Constituency by which he was elected;
- c) in the case of a Staff Governor, he ceases to be employed by the Trust or ceases to be a Member of the Class of the Staff Constituency by which he was elected;
- d) in the case of a CCG Governor, Local Authority Governor, University Governor or Voluntary Sector Governor, the organisation which has appointed him withdraws their appointment of him or, if that appointment arises from his employment by the appointing organisation, he ceases to be employed by the appointing organisation;
- e) he is a person whose tenure of office as a chairman of member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non disclosure of a pecuniary interest;
- f) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- g) he has failed to abide by the terms of any declaration made on nomination or appointment, or of any code of values and principles which the Trust may publish from time to time;

- h) he is a vexatious complainant, in that, in the opinion of the Board of Directors, he has persistently and without reasonable grounds, made an unjustified complaint which has the effect of subjecting the Trust (or any of its staff, agents, patients or carers) to inconvenience, harassment or expense;
- i) he has failed to declare an interest in accordance with Standing Orders or, contrary to the Standing Orders, has voted at a meeting on a matter on which he has an interest, or has failed to declare any interest to the Secretary as required by this Constitution or the Standing Orders; in this context 'interest' includes a pecuniary and a non-pecuniary interest, whether direct or indirect;
- j) he has been excluded from the Trust's premises because of abusive or violent behaviour; or he has failed to comply with or otherwise contravened the Trust's policy, 'Withholding treatment and exclusion from premises of violent and abusive patients' (as amended from time to time), and has been so notified to that effect by the Chief Executive;
- k) his name has been placed on a Safeguarding Register in connection with the protection of children and vulnerable adults or with sexual offences;
- l) he is a member of a Local Authority Overview and Scrutiny Committee for Health (Social Affairs and Health Scrutiny Commission).

8.12.2 Where a person appointed as a Governor ceases to be eligible to serve in that capacity by virtue of paragraph 8.12.1 he shall notify the Secretary in writing without delay.

8.12.3 Consideration will be given to the removal of a Governor if there is a breach of the:

- a) requirements for attendance at Council of Governors' meetings set by the Council of Governors; or
- b) eligibility criteria as contained within the legislation and as set out in paragraphs 8.11.1 and 8.12.1 above.

8.12.4 Removal will require the approval of a majority of the Governors present at a general meeting of the Council of Governors.

8.12.5 The Governor concerned will be eligible to make representation to the Council of Governors but not to vote on any resolution relating to his removal or any associated issue.

8.13 Vacancies

8.13.1 Where the membership of any member of the Council of Governors ceases for one of the reasons set out in paragraph 8.11 or paragraph 8.12 above, Public and Staff Governor vacancies shall be filled in accordance with the process set out in paragraph 8.13.2 to 8.13.5 below.

8.13.2 Where an elected Public or Staff Governor ceases to hold office within six months of his Election, or alternatively where an unrelated vacancy arises in the same Public Constituency or Class of a Staff Constituency as that in which an Election has been held in the preceding six months, the Trust shall offer the candidate who is not currently a Governor, who secured the second highest number of votes in the last Election for the Public Constituency or Class of the Staff Constituency in which the vacancy has arisen (“the reserve candidate”), the opportunity to assume the vacant office for the unexpired balance of the retiring Governor’s term of office. If that reserve candidate does not accept the invitation to fill the vacancy it will then be offered to the next reserve candidate who secured the next highest number of votes until the vacancy is filled.

8.13.3 If no reserve candidate is available or willing to fill the vacancy, or if the vacancy occurs more than six months after the retiring Governor’s appointment or the last Election for that Public Constituency or Class of the Staff Constituency in question, an Election will then be in accordance with the Election Scheme, save that if an Election is due to be held within six months of the vacancy having arisen, the office will stand vacant until the next scheduled Election, unless this would cause the aggregate number of Public Governors to be less than half the total membership of the Council of Governors. In that event an Election will be held in accordance with the Election Scheme as soon as reasonably practicable.

8.13.4 The returning officer under the Election Scheme shall maintain a record of votes cast at each Election for the above purposes and the returning officer shall conduct or shall oversee the conducting of the process set out in the preceding paragraphs.

8.13.5 CCG Governors, Education Governors, Local Authority Governors, and Voluntary Sector Governors are to be replaced in accordance with the processes agreed with the appointing organisations. The initial term of office of a replacement Governor shall be the unexpired balance of the retiring Governor’s term of office.

8.14 [Duties, roles and responsibilities of the Council of Governors](#)

8.14.1 The general duties of the Council of Governors are:

- a) to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and
- b) to represent the interests of the Members of the Trust as a whole and the interests of the public.

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

8.14.3 The Council of Governors will:

- a) approve at a general meeting the remuneration and allowances and other terms and conditions of the Chairman and Non-Executive Directors;
- b) appoint or dismiss at a general meeting the Chairman or other Non-Executive Directors;
- c) appoint or replace at a general meeting the Trust's auditors;
- d) approve at a general meeting the appointment of the Chief Executive;
- e) provide the views of the Council of Governors to the Board of Directors for the purposes of preparation by the Board of Directors of the document containing the information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor;
- f) respond appropriately when asked for its views by the Board of Directors in accordance with this Constitution;
- g) be presented with the annual accounts, auditors' report and the annual report;
- h) receive and consider the views of the Members on matters of significance to the future plans of the Trust;
- i) to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to Monitor and the entering into of significant transactions.

8.14.4 The removal of the Chairman or a Non-Executive Director shall require the approval of three-quarters of the Council of Governors;

8.14.5 The Council of Governors may appoint committees and sub-committees consisting of Governors to advise and assist the Council of Governors in carrying out its functions.

8.15 Referral to the Panel

8.15.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a Governor of the Trust may refer a question as to whether the Trust has failed or is failing:

- a) to act in accordance with the Constitution; or
- b) to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

8.15.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

9 Board of Directors

9.1 The Trust is to have a Board of Directors. It is to consist of Executive Directors and Non-Executive Directors

9.2 Composition of the Board of Directors:

- 9.2 (a) The Board of Directors is to comprise:
- i a Non-Executive Chairman;
 - ii no fewer than five and no more than eight other Non-Executive Directors;
 - iii no fewer than five and no more than eight Executive Directors.
- 9.2 (b) The Executive Directors are to include:
- i a Chief Executive, who shall also be the Accounting Officer;
 - ii a Director of Finance and Contracting;
 - iii a Medical Director, who shall be a registered medical practitioner or a registered dentist within the meaning of the Medical Act 1983 or the Dentists Act 1984 (as the case may be);
 - iv a Chief Nurse, who shall be a registered nurse or a registered midwife.
- 9.2 (c) The number of Executive Directors posts will not exceed the number of Non-Executive Director posts (including that of Chairman). In the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman shall have a second and casting vote at meetings of the Board of Directors where the number of votes for and against a motion is equal.
- 9.2 (d) Subject to Paragraph 16 of Schedule 7 to the 2006 Act, the Board of Directors shall:
- i decide any change to the title or function of the posts designated as Executive Director posts; and
 - ii determine any change in the number of Executive and Non-Executive Directors, provided that any change in the number of Executive and Non-Executive Directors is within the range set out in paragraph 9.2 (a) above.

9.3 [Vacancies for the Chairman and Non-Executive Directors](#)

- a) Vacancies for appointment as Chairman or Non-Executive Director may be advertised.
- b) Where the term of office of the Chairman or a Non-Executive Director has expired and he is eligible to hold office for a further term, he may be considered for re-appointment.
- c) The Chairman and Non-Executive Directors shall be eligible to serve as a Director the shorter of a maximum of nine years or three terms of office.

9.4 [Executive Directors' terms of office](#)

- 9.4.1 The terms and conditions of office for all Executive Directors shall be decided by the remuneration committee of the Board of Directors, comprising the Chairman and other Non-Executive Directors.

9.4.2 Chief Executive

- a) The Chief Executive shall be appointed by an appointment committee convened for the purpose of appointing the Chief Executive and that committee shall consist of the Chairman and one or more (but not all) of the other Non-Executive Directors.
- b) The appointment of a Chief Executive shall require the approval of the Council of Governors at a general meeting.

9.4.3 Executive Directors

The Executive Directors, other than the Chief Executive, shall be appointed by an appointment committee convened for the purpose of appointing the Executive Director(s) which shall consist of the Chairman, the Chief Executive, and one or more (but not all) of the other Non-Executive Directors, and be led by the Chief Executive.

9.4.4 On termination of his contract of employment, an Executive Director shall cease to be a member of the Board of Directors.

9.4.5 If an Executive Director is suspended from his contract of employment or is on long-term sick leave, the Chairman and Non-Executive Directors in the case of the Chief Executive, and the Chief Executive in the case of the other Executive Directors, may appoint another person as an Executive Director in an acting capacity in his place.

9.5 Disqualification from being a Director

9.5.1 A person may not be a Director if:

- a) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- b) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- c) he has, within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- d) in the case of the Chairman and the Non-Executive Directors, he does not meet the requirements of section 16 of schedule 7 to the 2006 Act;
- e) he is a person whose tenure of office as a chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- f) he has in the preceding ten years been dismissed by the Trust, its predecessor or another organisation on any grounds other than redundancy or ill health;

- g) he has failed to declare an interest in accordance with Standing Orders or, contrary to the Standing Orders has voted at a meeting on a matter on which he has an interest, or, has failed to declare any interest to the Secretary to the Board as required by this Constitution or the Standing Orders and in this subparagraph interest includes a pecuniary and a non-pecuniary interest, in either case whether direct or indirect;
- h) his name has been placed on a Safeguarding Register in connection with the protection of children and vulnerable adults or with sexual offences.

9.6 Duties, roles and responsibilities of the Board of Directors

- 9.6.1 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.
- 9.6.2 All the powers of the Trust are to be exercisable by the Board of Directors on its behalf. Any of those powers may be delegated to a committee of Directors or to an Executive Director.
- 9.6.3 The Board of Directors will decide the strategic direction of the Trust, set the targets for the Trust's performance and direct the management of the Trust.
- 9.6.4 The Board of Directors will establish a committee of Non-Executive Directors, as an audit committee, to monitor, review and carry out such other functions in relation to the auditor and the audit functions of the Trust as appropriate.
- 9.6.5 The Board of Directors will establish a committee of Non-Executive Directors as a remuneration committee to decide the remuneration and allowances and other terms and conditions of office of the Executive Directors.
- 9.6.6 It is for the Chairman and Non-Executive Directors to appoint or remove the Chief Executive. The appointment of the Chief Executive is subject to the approval of the Council of Governors. The removal of the Chief Executive is not subject to the approval of the Council of Governors.
- 9.6.7 It is for a committee comprising the Chairman, Chief Executive and the other Non-Executive Directors to appoint or remove an Executive Director.
- 9.6.8 One of the Non-Executive Directors (excluding the Chairman) is to be appointed by the Board of Directors as the Senior Independent Director.
- 9.6.9 The Board of Directors is to prepare the information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor and in doing so shall have regard to the views of the Council of Governors.
- 9.6.10 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.

- 9.6.11 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- a) 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
 - b) 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.
- 9.6.12 The duty referred to in sub-paragraph 9.6.11a) is not infringed if:
- a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - b) the matter has been authorised in accordance with the Constitution.
- 9.6.13 The duty referred to in sub-paragraph 9.6.11b) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 9.6.14 In sub-paragraph 9.6.11b), “third party” means a person other than:
- a) the Trust; or
 - b) a person acting on its behalf.

10 Meetings

10.1 Meetings of the Council of Governors

- 10.1.1 The Chairman is to preside at meetings of the Council of Governors. In the absence of the Chairman, or at the request of the Chairman where the Chairman may not preside at the meeting because of a conflict of interest, the Deputy Chairman of the Council of Governors will preside at meetings, subject to paragraph 11.15.
- 10.1.2 A record of each meeting will be kept.
- 10.1.3 The Council of Governors is to meet at least three times a year.
- 10.1.4 The Council of Governors shall adopt standing orders, which shall set out the practices and procedures from the Council of Governors in accordance with section 14(1)(c) of schedule 7 to the 2006 Act.
- 10.1.5 Meetings of the Council of Governors are to be open to the public. The Council of Governors may, by resolution and for special reasons, exclude the public from the whole part of a meeting in accordance with the provisions made in its standing orders.
- 10.1.6 A general meeting shall be held prior to 31 October each year at which the Council of Governors is to be presented with the annual accounts, any report of the auditor on them and the annual report.

- 10.1.7 A Governor may only vote at a meeting of the Council of Governors if he is not within paragraphs 8.11.1 and 8.12.1 and, in the case of a Public Governor or Staff Governor, if he is a Member of the Trust.
- 10.1.8 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.
- 10.2 **Meetings of the Board of Directors**
- 10.2.1 The Chairman of the Trust is to preside at meetings of the Board of Directors. In the absence of the Chairman, or at the request of the Chairman where the Chairman may not preside at the meeting because of a conflict of interest, the Deputy Chairman of the Board of Directors will preside at meetings, subject to paragraph 11.15.
- 10.2.2 A record of each meeting will be kept.
- 10.2.3 The Board of Directors shall adopt standing orders covering the proceedings and business of its meetings. The proceedings shall not be invalidated by any vacancy in its membership, or any defect in a Director's appointment.
- 10.2.4 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 10.2.5 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.
- 10.3 **Annual Members' Meeting**
- 10.3.1 The Trust shall hold an annual meeting of its Members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 10.3.2 The following documents are to be presented to the Members at the Annual Members' Meeting by at least one member of the Board of Directors in attendance:
- a) the annual accounts;
 - b) any report of the auditor on them; and
 - c) the annual report.
- 10.3.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 10.1.6 with the Annual Members' Meeting.
- 10.4 **Committees and sub-committees**
- 10.4.1 Meetings of any committees and sub-committees of the Council of Governors or the Board of Directors shall not be open to the public.
- 10.5 **Joint informal meetings of the Governors and the Directors**

- 10.5.1 Joint informal meetings between the Governors and Directors will be held at least once a year. The Chairman shall normally preside at the joint meetings.
- 10.5.2 Joint informal meetings of the meetings of the Governors and Directors are intended to promote the development of Governors and Directors and provide an opportunity to share ideas and views. They are not formal meetings of either the Council of Governors or the Board of Directors, and business which is normally transacted by either the Council of Governors or the Board of Directors is not transacted at such joint informal meetings.
- 10.5.3 Joint informal meetings are not formal meetings of either the Council of Governors or the Board of Directors and shall not be open to members of the public.
- 10.5.4 No decision which is specifically reserved in the Constitution to either the Board of Directors or the Council of Governors shall be taken at a joint meeting.

10.6 Remuneration and expenses

- 10.6.1 Governors are not to receive remuneration for serving as Governors.
- 10.6.2 The Trust may pay travelling and other expenses to Governors at such rates as the Board of Directors may decide.
- 10.6.3 The remuneration and allowance for Non-Executive Directors set by the Council of Governors are to be published in the annual report.
- 10.6.4 The Secretary will set out guidelines for the Council of Governors on the remuneration and allowances for Non-Executive Directors.

11 Declaration of interests

- 11.1 Pursuant to section 20 of schedule 7 to the 2006 Act, a register of Directors' interests and a register of Governors' interests shall be kept by the Trust.
- 11.2 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 11.3 Any declaration required by paragraph 11.2 must be made before the Trust enters into the transaction or arrangement.
- 11.4 In addition to paragraph 11.2, all existing Directors (including for the purposes of this Constitution, Non-Executive Directors) and Governors shall declare relevant and material interests. Any Directors or Governors appointed or elected subsequently shall do so on appointment or Election.
- 11.5 Interests which should be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the register, are:
- a) directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - b) ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.

- c) majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- d) position of authority in a charity or voluntary organisation in the field of health and social care.
- e) any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
- f) any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.

- 11.6 If Directors or Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman or the Secretary.
- 11.7 At the time the interests are declared, they shall be recorded by the Secretary in the relevant register. If a declaration under this paragraph 11 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. Any changes in interests should be officially declared at the next meeting of the Board of Directors or the Council of Governors, as applicable, following the date of the change(s), through the presentation of the updated register. It is for the Director or Governor, on becoming aware of the existence of a relevant or material interest, to inform the Secretary before or at the next general meeting of the Board of Directors or the Council of Governors. The Secretary shall amend the relevant register upon being so notified.
- 11.8 This paragraph 11 does not require a declaration of an interest of which the Director or Governor is not aware or where the Director or Governor is not aware of the transaction or arrangement in question.
- 11.9 A Director or Governor need not declare an interest:
- 11.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 11.9.2 if, or to the extent that, the Directors or Governors are already aware of it;
 - 11.9.3 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.
- 11.10 The details of Directors' and Governors' interests recorded in the relevant register shall be kept up to date by means of a monthly review of the register carried out by the Secretary, during which any changes of interests declared during the preceding month will be incorporated.
- 11.11 Subject to contrary regulations being passed, the register will be available for inspection by the public free of charge.

- 11.12 Copies or extracts of the register must be provided to Members upon request 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.
- 11.13 If during the course of a meeting of the Board of Directors or the Council of Governors a conflict of interest is established, the Director(s) or Governor(s) concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established.
- 11.14 If there is a dispute as to whether a conflict of interest does exist, the matter will be decided by a majority vote of the Governors or Directors (as the case may be) who are present at the meeting, with the Chairman having the casting vote.
- 11.15 If, in relation to 11.13, the Chairman has a conflict of interest, the Deputy Chairman shall be entitled to exercise the casting vote. If the Deputy Chairman has a conflict of interest, a Governor from the Public Constituency (in respect of the Council of Governors), or a Non-Executive Director (in respect of the Board of Directors), shall be nominated to preside and to exercise the casting vote, the nomination to be approved by a majority vote of those present at the meeting.
- 11.16 Having regard to paragraphs 10.6.1 and 10.6.2, any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 11.17 Subject to any other provision of this Constitution, a Governor or Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - b) he is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 11.18 A Governor or Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- a) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
 - b) of an interest in any company, body or person with which he is connected as mentioned in the preceding sub-paragraph which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor or Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 11.19 Where a Governor or Director:

- a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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

11.20 The standing orders of the Council of Governors and the Board of Directors may make further provision in relation to interests and the requirement to declare an interest.

12 Registers

12.1 The Trust is to have:

- a) a register of Members showing, in respect of each member, the Constituency or Class to which he belongs;
- b) a register of members of the Council of Governors;
- c) a register of interests of members of the Council of Governors;
- d) a register of the members of the Board of Directors;
- e) a register of interests of the members of the Board of Directors.

12.2 The Secretary shall be responsible for compiling and maintaining the registers. 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 through a monthly review of the registers.

12.3 Register of Members

12.3.1 The Trust shall maintain a register of Members and all Members of any Public Constituency must, at the request of the Secretary, complete and sign a membership data form in the format prescribed by the Secretary, containing such information regarding that Member as the Secretary may require for the purposes of compiling the register of Members and in ensuring that the same is kept up to date as appropriate.

- 12.3.2 The Secretary shall maintain the register in two parts:
- a) Part one shall include the name of each Member and the Constituency or Class to which he belongs and shall be open to inspection by the public in accordance with Paragraph 13 of this Constitution.
 - b) 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.
- 12.3.3 Notwithstanding this provision, the Trust shall extract such information as it needs in aggregate in order to satisfy itself, in accordance with Annex I of this Constitution, that the actual membership of the Trust is representative of those eligible for membership.
- 12.4 **Register of members of the Council of Governors**
- 12.4.1 The Trust shall maintain a register of members of the Council of Governors and the said register shall list:
- a) the names of members of the Council of Governors,
 - b) their category of membership of the Council,
 - c) for appointed Governors, the organisation by which they have been appointed, and
 - d) an address through which they may be contacted (which may be via the Trust).
- 12.5 **Register of interests of the members of the Council of Governors.**
- 12.5.1 The Trust shall maintain a register of interests of the members of the Council of Governors and each member of the Council of Governors shall complete and sign a form, as prescribed by the Secretary, setting out any interests to be declared in accordance with the standing orders of the Council. The register shall contain the names of all members of the Council of Governors and any interests declared, including the absence of any interests.
- 12.6 **Register of the members of the Board of Directors**
- 12.6.1 The Trust shall maintain a register of the Board of Directors and the said register shall list the names of members of the Board of Directors, their capacity on the Board and an address through which they may be contacted (which may be via the Trust).
- 12.7 **Register of interests of the members of the Board of Directors**
- 12.7.1 The Trust shall maintain a register of interests of the members of the Board of Directors and each member of the Board of Directors shall complete and sign a form, as prescribed by the Secretary, setting out any interests to be declared in accordance with the standing orders of the Board of Directors . The register shall contain the names of all members of the Board of Directors and any interests declared, including the absence of any interests.

12.8 The Secretary will send to Monitor a list of the persons who were first elected or appointed as:

- a) the members of the Council of Governors and
- b) the members of the Board of Directors.

in relation to any time before the Trust is first required to send annual reports to Monitor.

13 Public documents

13.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

- a) a copy of the current Constitution;
- b) the registers, subject to the provisions at 13.4 and 13.6;
- c) a copy of the latest annual accounts and of any report of the auditor on them;
- d) a copy of the latest annual report;

13.2 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:

- a) a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
- b) a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
- c) a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
- d) a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- e) a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;

- f) a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- g) a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- h) a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
- i) a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- j) a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

13.3 Subject to the provisions of paragraph 13.4, 13.5 and 13.6, any person who requests it is to be provided with a copy or extract from any of the above documents.

13.4 The documents mentioned in paragraph 13.1 and 13.2 are also available for inspection by members of the public, except (in relation to the register of Members) the details of any Member who has requested that the Trust not make his details available for inspection, in accordance with the Public Benefit Corporation (Register of Members) Regulations 2004 or otherwise as prescribed by regulations made under the 2006 Act.

13.5 Insofar as those documents at paragraph 13.1 and 13.2 are required to be available:

- a) they are to be provided free of charge at all reasonable times and,
- b) a person who requests it is to be provided with a copy of or extract from them.

13.6 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

14 Auditor

14.1 The Trust is to have an auditor and is to provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under schedule 10 to the 2006 Act and section 23 of schedule 7 to the 2006 Act.

14.2 A person may only be appointed auditor if he (or in the case of a firm, each of its members) is a member of one or more of the bodies referred to in section 23(4) of schedule 7 to the 2006 Act.

14.3 Appointment of the auditor by the Council of Governors is provided for in paragraph 8.14.3(c), and monitoring of the auditor's functions by a committee of Non-Executive Directors is provided for in paragraph 9.6.4.

14.4 An officer of the Audit Commission may be appointed by the Council of Governors as an auditor with the agreement of the Commission.

14.5 The auditor is to carry out his duties in accordance with schedule 15 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted when preparing the accounts of the Trust.

15 Accounts

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

15.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

15.3 The accounts are to be audited by the Trust's auditor.

15.4 The following documents shall be made available to the Comptroller and Auditor General for examination at his request:

- a) the accounts,
- b) the records relating to them, and
- c) any report of the auditor on them.

15.5 The Trust, through its Accounting Officer, shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

15.6 Monitor may with the approval of the Secretary of State direct the Trust:

15.6.1 to prepare accounts in respect of such period or periods as may be specified in the direction; and

15.6.2 that any accounts prepared by the Trust by virtue of paragraph 15.6.1 are to be audited in accordance with such requirements as may be specified in the direction.

15.7 In preparing its annual accounts, or in preparing any accounts by virtue of paragraph 15.6.1, the Trust is to comply with any directions given by Monitor with the approval of the Secretary of State as to:

- a) the methods and principles according to which the accounts are to be prepared;
- b) the content and form of the accounts.

15.8 The Trust must:

- a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament, and
- b) send copies of those documents to Monitor within such period as Monitor may direct.

15.9 The Trust must send to Monitor within such periods as Monitor may direct:

15.9.1 a copy of any accounts prepared by the Trust by virtue of sub-paragraph 15.6.1; and

15.9.2 a copy of any report of an auditor on them prepared by virtue of sub-paragraph 15.6.2.

16 Annual reports, forward plans and non-NHS work

16.1 The Trust is to prepare annual reports and send them to Monitor.

16.2 The reports are to give:

- a) information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership;
- b) information on 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;
- c) information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 10.1.8;
- d) information on the Trust's policy on pay and on the work of the committee established under paragraph 9.6.5 and such other procedures as the Trust has on pay;
- e) information on the remuneration of the Directors and on the expenses of the Governors and the Directors; and
- f) any other information Monitor requires.

16.3 The Trust is to comply with any decision Monitor makes as to:

- a) the form of the reports;
- b) when the reports are to be sent to him;
- c) the periods to which the reports are to relate.

- 16.4 The Trust is to give information as to its forward planning in respect of each Financial Year to Monitor. This information is to be prepared by the Directors, after consulting the Council of Governors.
- 16.5 Each forward plan referred to in paragraph 16.4 above must include information about:
- 16.5.1 the activities others than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
- 16.5.2 the income it expects to receive from doing so.
- 16.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 16.5.1, the Council of Governors must:
- 16.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions; and
- 16.6.2 notify the Directors of the Trust of its determination.
- 16.7 The Trust may only implement any proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England if more than half of the members of the Council of Governors voting approve its implementation.

17 Indemnity

- 17.1 Members of the Council of Governors, members of the Board of Directors, and other officers who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly.
- 17.2 Any costs arising in this way will be met by the Trust, and the Trust will make and maintain insurance arrangements for this purpose.

18. Instruments etc

- 18.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 18.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

19 Communication between the Council of Governors and the Board of Directors

- 19.1 The Board of Directors will develop a protocol to promote effective communication between the Council of Governors and the Board of Directors, and will have regard to the views of the Council of Governors on this.
- 19.2 The Council of Governors and the Board of Directors will use their best endeavours

to resolve any difference of view through discussion, but in the event of any conflict, the Board of Directors, pursuant to section 15(2) of schedule 7 to the 2006 Act, will decide the disputed matter.

20 Amendment of the Constitution

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

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

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

20.2 Only the Board of Directors, pursuant to section 15(2) of schedule 7 to the 2006 Act, may propose amendments to the Constitution.

20.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

20.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

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

20.4 If more than half of the Members voting in accordance with paragraph 20.3.2 approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

20.5 Amendments made under paragraph 20.1 take effect as soon as the conditions in that paragraph are satisfied but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

20.6 Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with schedule 7 of the 2006 Act.

21 Merger, acquisition, separation or dissolution of the Trust

21.1 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.

22 Significant transactions

22.1 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.

22.2 "Significant transaction" means:

22.2.1 a non-healthcare transaction or a transaction outside the UK where:

- a) the gross assets subject to the transaction divided by the gross assets of the Trust is greater than 5%;
- b) the EBITDA attributable to the assets subject to the transaction divided by the EBITDA of the Trust is greater than 12.5.%;
- c) the income attributable to the assets subject to the transaction divided by the income of the Trust is greater than 7.5%;
- d) the gross capital of the company or business being acquired divided by the total capital of the Trust is greater than 5%;
- e) the EBITDA margin attributable to the assets subject to the transaction is dilutive,

22.2.2 a UK healthcare transaction where:

- a) the gross assets subject to the transaction divided by the gross assets of the Trust is greater than 10%;
- b) the EBITDA attributable to the assets subject to the transaction divided by the EBITDA of the Trust is greater than 25.%;
- c) the income attributable to the assets subject to the transaction divided by the income of the Trust is greater than 15%;
- d) the gross capital of the company or business being acquired divided by the total capital of the Trust is greater than 10%;
- e) the EBITDA margin attributable to the assets subject to the transaction is dilutive,

22.3

For the purposes of paragraph 22.2:

22.3.1 gross assets refer is the total of fixed assets and current assets;

22.3.2 EBITDA is earnings before interest, taxes, depreciation, and amortisation;

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

22.3.4 Dilutive refers to a lower EBITDA margin than the Trust has reported in the last audited financial year.

Annexes

- 1 Area and Public Constituencies of the Trust
- 2 Election Scheme
- 3 List of local authorities authorised for the purposes of appointing Local Authority Governors

Annex I: Area and Public Constituencies of the Trust

I Introduction

- 1.1 A Public Constituency is defined by reference to the local authority wards specified in this annex. This is also the Area of the Trust for electoral purposes.
- 1.2 For Chesterfield Borough Council, Bolsover District Council and North East Derbyshire District Council all wards are included.
- 1.3 For Amber Valley Borough Council, Derbyshire Dales District Council and High Peak Borough Council some wards are excluded because they are not served by the Trust.

2 Public Constituencies

2.1 Name of Public Constituency: **Bolsover**

Bolsover Public Constituency comprises the following wards:

Ward			
Barlborough	Elmton-with-Creswell	Shirebrook South West	
Blackwell	Pinxton	South Normanton East	
Bolsover North West	Pleasley	South Normanton West	
Bolsover South	Scarcliffe	Tibshelf	
Bolsover West	Shirebrook East	Whitwell	
Clowne North	Shirebrook Langwith		
Clowne South	Shirebrook North		
	West		
	Shirebrook South East		

Number of Governors **3**

Minimum membership number **600**

2.2 Name of Public Constituency: **Chesterfield**

Chesterfield Public Constituency comprises the following wards:

Ward		
Barrow Hill and New Whittington	Loundsley Green	
Brimington North	Lowgates and Woodthorpe	
Brimington South	Middlecroft and Poolsbrook	
Brockwell	Moor	
Dunstan	Old Whittington	
Hasland	Rother	
Hollingwood and Inkersall	St Helen's	
Holmebrook	St Leonard's	
Linacre	Walton	
	West	

Number of Governors **7**

Minimum membership number **1400**

2.3 Name of Public Constituency: **Derbyshire Dales and North Amber Valley**

Derbyshire Dales and North Amber Valley Public Constituency comprises the following wards:

Ward	Alfreton	Hartington and Taddington	Swanwick
	Alport	Hathersage and Eyam	Tideswell
	Bakewell	Heage and Ambergate	Wingfield
	Belper Central	Ironville and Riddings	Wirksworth
	Belper East	Lathkill and Bradford	Winster and South
	Belper North	Litton and Longstone	Darley
	Belper South	Masson	
	Bradwell	Matlock All Saints	
	Calver	Matlock St Giles	
	Carsington Water	Ripley	
	Chatsworth	Ripley and Marehay	
	Codnor and Waingroves	Somercotes	
	Crich	Stanton	
	Darley Dale		
	Dovedale and Parwich		

Number of Governors **2**

Minimum membership number **400**

2.4

Name of Public Constituency: **High Peak**

High Peak Public Constituency comprises the following wards:

Ward	Barms	Corbar	New Mills West
	Blackbrook	Cote Heath	Sett
	Burbage	Hayfield	Stone Bench
	Buxton Central	Hope Valley	Temple
	Chapel East	Limestone Peak	Whaley Bridge
	Chapel West	New Mills East	

Number of Governors **1**

Minimum membership number **200**

2.5

Name of Public Constituency: **North East Derbyshire**

North East Derbyshire Public Constituency comprises the following wards:

Ward	Ashover	Eckington North	Renishaw
	Barlow and	Eckington South	Ridgeway and Marsh Lane
	Holmesfield	Gosforth Valley	Shirland
	Brampton and Walton	Grassmoor	Sutton
	Clay Cross North	Holmewood and Heath	Tupton
	Clay Cross South	Killamarsh East	Unstone
	Coal Aston	Killamarsh West	Wingerworth
	Dronfield North	North Wingfield	
	Dronfield South	Central	
	Dronfield Woodhouse	Pilsley and Morton	

Number of Governors **4**

Minimum membership number **800**

Annex 2: Election Scheme

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1. Interpretation

Part 2 Timetable for Election

2. Timetable
3. Computation of time

Part 3 Returning officer

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

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9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
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26. Eligibility to vote
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30. Issue of replacement ballot paper
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49. Expenses incurred by candidates
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51. Publicity about Election by the Trust
52. Information about candidates for inclusion with voting documents
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Part 11 Questioning Elections and irregularities

54. Application to question an Election

Part 12 Miscellaneous

55. Secrecy
56. Prohibition of disclosure of vote
57. Disqualification
58. Delay in postal service through industrial action or unforeseen event

Part 1 Interpretation

1. Interpretation

Expressions used in these rules have the same meaning as in paragraph 1.1 of this Constitution and in the 2006 Act.

Part 2 Timetable for Election

2. Timetable

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

Proceedings and time

Publication of notice of Election

Not later than the thirty-ninth day before the day of the close of the poll.

Final day for delivery of nomination papers to returning officer

Not later than the twenty-fifth day before the day of the close of the poll.

Publication of statement of nominated candidates

Not later than the twenty-fourth day before the day of the close of the poll.

Final day for delivery of notices of withdrawals by candidates from Election

Not later than the twenty-second day before the day of the close of the poll.

Notice of the poll

Not later than the twelfth day before the day of the close of the poll.

Close of the poll

By 5.00pm on the final day of the Election.

3. Computation of time

1) In computing any period of time for the purposes of the timetable

- a. a Saturday or Sunday,
- b. Christmas Day, Good Friday or a bank holiday, or
- c. a day appointed for public thanksgiving or mourning

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

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

Part 3 Returning officer

4. Returning officer

1) Subject to rule 57, the returning officer for an Election is to be appointed by the Trust.

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

5. Staff

Subject to rule 57, the returning officer may appoint and pay such staff, including such technical advisers, as he considers necessary for the purposes of the Election.

6. Expenditure

The Trust is to pay the returning officer:

- a. any expenses incurred by that officer in the exercise of his functions under these rules;
- b. such remuneration and other expenses as the Trust may determine.

7. Duty of co-operation

The Trust is to co-operate with the returning officer in the exercise of his functions under these rules.

Part 4 Stages common to contested and uncontested Elections

8. Notice of Election

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

- a. the Constituency, or Class within a Constituency, for which the Election is being held;
- b. the number of members of the Council of Governors to be elected from that Constituency, or Class within that Constituency;
- c. the details of any nomination committee that has been established by the Trust;
- d. the address and times at which nomination papers may be obtained;
- e. the address for the return of nomination papers, and the final date that they must be delivered to 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

- 1) Each candidate must nominate himself on a single nomination paper.
- 2) The returning officer is to:

- a. supply any Member of the Trust with a nomination paper, and
- b. prepare a nomination paper for signature at the request of any Member of the Trust.

10. Candidate's consent and particulars

The nomination paper must state the candidate's

- a. full name,
- b. contact address in full, and
- c. the Constituency, or Class within a Constituency of which the candidate is a Member.

11. Declaration of interests

- 1) The nomination paper must state
 - a. any financial interest that the candidate has in the Trust;
 - b. whether the candidate is a member of a political party, and if so, which party.
- 2) If the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

The nomination paper must state:

- a. that he is not prevented from being a member of the Council of Governors by section 8 of schedule 7 to the 2006 Act or by any provision of the Constitution; and
- b. for a Member of the Public Constituency, the particulars of his qualification to vote as a Member of the Public Constituency for which the Election is being held.

13. Signature of candidate

The nomination paper must be signed and dated by the candidate, indicating that:

- a. he wishes to stand as a candidate,
- b. his declaration of eligibility, as required under rule 12, is true and correct, and
- c. his declaration of interests as required under rule 11, is true and correct.

14. Decisions as to the validity of nomination papers

- 1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for Election unless and until the returning officer:
 - a. decides that the candidate is not eligible to stand,
 - b. decides that the nomination paper is invalid,
 - c. receives satisfactory proof that the candidate has died, or

- d. receives a written notification by the candidate of their withdrawal from candidacy.
- 2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds.
 - a. that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the Election;
 - b. that the paper does not contain the candidate's particulars, as required by rule 10;
 - c. that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
 - d. that the paper does not include a declaration of eligibility as required by rule 12;
 - e. that the paper is not signed and dated by the candidate, as required by rule 13.
 - 3) The returning officer is to examine each nomination paper as soon as is practicable after he has received it, and decide whether the candidate has been validly nominated.
 - 4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for his decision.
 - 5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of nominated candidates

- 1) The returning officer is to prepare and publish a statement showing the candidates who are standing for Election as nominated.
- 2) The statement must show:
 - a. the name, contact address and Constituency or Class within a Constituency of each candidate standing, and
 - b. the declared interests of each candidate standing, as given in their nomination paper.
- 3) The statement must list the candidates standing for Election in alphabetical order by surname.
- 4) The returning officer must send a copy of the statement of nominated candidates and copies of the nomination papers to the Trust as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

- 1) The Trust is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

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

17. Withdrawal of candidates

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

18. Method of Election

- 1) If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is greater than the number of Members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 2) If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is equal to the number of Members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 3) If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is less than the number of Members to be elected to the Council of Governors, then:
 - a. the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - b. the returning officer is to order a new Election to fill any vacancy which remains unfilled, on a day appointed by him in consultation with the Trust.

Part 5 Contested Elections

19. Poll to be taken by ballot

- 1) The votes at the poll must be given by secret ballot.
- 2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper

- 1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an Election after any withdrawals under these rules, and no others, inserted in the paper.
- 2) Every ballot paper must specify:

- a. the name of the Trust;
 - b. the Constituency, or Class within a Constituency, for which the Election is being held;
 - c. the number 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 the nominated candidates;
 - e. instructions on how to vote;
 - f. that the ballot paper is to be returned by post, with the address for its return and the date and time of the close of the poll;
 - g. the contact details of the returning officer.
- 3) Each ballot paper must have a unique identifier.
 - 4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (Public Constituency)

- 1) In respect of an Election for the Public Constituency a declaration of identity must be issued with each ballot paper.
- 2) The declaration of identity is to include a declaration:
 - a. that the voter is the person to whom the ballot paper was addressed;
 - b. that the voter has not marked or returned any other voting paper in the Election;
 - c. for a Member of the Public Constituency, of the particulars of that Member's qualification to vote as a Member of the Public Constituency for which the Election is being held.
- 3) The declaration of identity is to include space for:
 - a. the name of the voter,
 - b. the address of the voter,
 - c. the voter's signature, and
 - d. the date that the declaration was made by the voter.
- 4) The voter must be required to return the declaration of identity together with the ballot paper.
- 5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 1) The Trust 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 do not come within rule 26 (to be known as the list of eligible voters) as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an Election.
- 2) The list is to include, for each Member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll

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

- a. the name of the Trust;
- b. the Constituency, or Class within a Constituency, for which the Election is being held;
- c. the number 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 returning by post;
- f. the address for return of the ballot papers, and the date for the close of the poll;
- g. the address and final dates for applications for replacement ballot papers;
- h. the contact details of the returning officer.

24. Issue of voting documents by returning officer

- 1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each Member of the Trust named in the list of eligible voters:
 - a. a ballot paper, and ballot paper envelope,
 - b. a declaration of identity (if required),
 - c. information about each candidate standing for Election, pursuant to rule 52 of these rules, and
 - d. a covering envelope.
- 2) The documents are to be sent to the mailing address for each Member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

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

- 2) The covering envelope is to have:
 - a. the address for return of the ballot paper printed on it, and
 - b. pre-paid postage for return to that address.
- 3) There should be clear instructions to the voter, either printed on the covering envelope or elsewhere, to seal the following documents inside the covering envelope and return it to the returning officer:
 - a. the completed declaration of identity if required, and
 - b. the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote

An individual who becomes a Member of the Trust on or before the closing date for the receipt of nominations by candidates for the Election, is eligible to vote in that Election.

27. Voting by persons who require assistance

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

28. Spoilt ballot papers

- 1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he can obtain it.
- 3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he:
 - a. is satisfied as to the voter’s identity, and
 - b. has ensured that the declaration of identity, if required, has not been returned.
- 4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
 - a. the name of the voter,
 - b. the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - c. the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers

Where a voter has not received his or her ballot paper by the fourth day before the close

of the poll, that voter may apply to the returning officer for a replacement ballot paper.

30. Issue of replacement ballot paper

- 1) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he :
 - a. is satisfied as to the voter's identity,
 - b. has no reason to doubt that the voter did not receive the original ballot paper, and
 - c. has ensured that the declaration of identity if required has not been returned.
- 2) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers"):
 - a. the name of the voter, and
 - b. the details of the unique identifier of the replacement ballot paper.

31. Declaration of identity for replacement ballot papers (Public Constituency)

- 1) In respect of an Election for the public a declaration of identity must be issued with each replacement ballot paper.
- 2) The declaration of identity is to include a declaration:
 - a. that the voter has not voted in the Election with any ballot paper other than the ballot paper being returned with the declaration, and
 - b. of the particulars of that Member's qualification to vote as a Member of the Public Constituency for which the Election is being held.
- 3) The declaration of identity is to include space for:
 - a. the name of the voter,
 - b. the address of the voter,
 - c. the voter's signature, and
 - d. the date that the declaration was made by the voter.
- 4) The voter must be required to return the declaration of identity together with the ballot paper.
- 5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents

- 1) Where the returning officer receives a:
 - a. covering envelope, or
 - b. any other envelope containing a declaration of identity, a ballot paper envelope, or a ballot paper, before the close of the poll,

that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

- 2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to:
 - a. the candidate for whom a voter has voted, or
 - b. the unique identifier on a ballot paper.
- 3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper

- 1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been returned before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.
- 2) Where the returning officer is satisfied that rule 33(1) has been fulfilled, he is to:
 - a. put the declaration of identity if required in a separate packet, and
 - b. put the ballot paper aside for counting after the close of the poll.
- 3) Where the returning officer is not satisfied that rule 33(1) has been fulfilled, he is to:
 - a. mark the ballot paper “disqualified”;
 - b. if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it to the ballot paper;
 - c. record the unique identifier on the ballot paper in a list (the “list of disqualified documents”);
 - d. place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (Public Constituency)

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to:

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

35. Sealing of packets

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

- a. the disqualified documents, together with the list of disqualified documents inside it,
- b. the declarations of identity if required,
- c. the list of spoiled ballot papers,
- d. the list of lost ballot papers,

- e. the list of eligible voters, and
- f. the list of tendered ballot papers.

Part 6 **Counting the votes**

36. Arrangements for the counting of the votes.

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

37. The count

- 1) The returning officer is to:
 - a. count and record the number of ballot papers that have been returned, and
 - b. count the votes according to the provisions in this Part of the rules.
- 2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
- 3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

38. Rejected ballot papers

- 1) Any ballot paper:
 - a. which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - b. on which 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
 - d. which is unmarked or rejected because of uncertainty,shall, subject to rules 38(2) and 38(3), be rejected and not counted.
- 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.
- 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 can be identified by it.
- 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 38(2) or 38(3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- 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;
 - d. unmarked or rejected because of uncertainty;

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

39. Equality of votes

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

40. Declaration of result for contested Elections

- 1) In a contested Election, when the result of the poll has been ascertained, the returning officer is to:
 - a. declare the candidate or candidates for 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 to the Chairman of the Trust of the name of each candidate whom he has declared elected;
 - c. give public notice of the name of each candidate whom he has declared elected.
- 2) The returning officer is to make available on request:
 - 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 38(5).

41. Declaration of result for uncontested Elections

In an uncontested Election, the returning officer is to as soon as is practicable after the 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 to the Chairman of the Trust of the name of each candidate whom he has declared elected;
- c. give public notice of the name of each candidate whom he has declared elected.

Part 8 Disposal of documents

42. Sealing up of documents relating to the poll

- 1) On completion of the counting at a contested Election, the returning officer is to seal up the following documents in separate packet:
 - a. the counted ballot papers,
 - b. the ballot papers endorsed with “rejected in part”,
 - c. the rejected ballot papers, and
 - d. the statement of rejected ballot papers.
- 2) The returning officer must not open the sealed packets of:
 - a. the disqualified documents, with the list of disqualified documents inside it,
 - b. the declarations of identity,
 - c. the list of spoilt ballot papers,
 - d. the list of ballot papers,
 - e. the list of eligible voters, and
 - f. the list of tendered ballot papers.
- 3) The returning officer must endorse on each packet a description of:
 - a. its contents,
 - b. the date of the publication of notice of the Election,
 - c. the name of the Trust to which the Election relates, and
 - d. the Constituency, or Class within a Constituency, to which the Election relates.

43. Delivery of documents

Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 42, the returning officer is to forward them to the Chairman of the Trust.

44. Forwarding of documents received after close of the poll

Where:

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

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

45. Retention and public inspection of documents

- 1) The Trust is to retain for one year the documents relating to an Election forwarded to the Chairman by the returning officer under these rules, and then, unless otherwise directed by Monitor, cause them to be destroyed.
- 2) With the exception of the documents listed in rule 46(1), the documents held relating to an Election shall be available for inspection by members of the public at all reasonable times.
- 3) A person may request a copy or extract from the documents relating to an Election that are held by the Trust, and the Trust is to provide it, and may impose a reasonable charge for doing so.

46. Application for inspection of certain documents relating to an Election

- 1) The Trust may not allow the inspection of or the opening of any sealed packet containing:
 - a. any rejected ballot papers, including ballot papers rejected in part,
 - b. any disqualified documents, or the list of disqualified documents,
 - c. any counted ballot papers,
 - d. any declarations of identity, or
 - e. the list of eligible voters,by any person without the consent of Monitor.
- 2) A person may apply to Monitor to inspect any of the documents listed in rule 46(1), and the Independent Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an Election pursuant to Part 11.
- 3) Monitor'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 Trust must only make the documents available for inspection in accordance with those terms and conditions.

- 4) On an application to inspect any of the documents listed in rule 46(1),
 - a. in giving its consent, Monitor, and
 - b. in making the documents available for inspection, the Trustmust ensure that the way in which the vote of any particular Member has been given shall not be disclosed, until it has been established:
 - c. that his or her vote was given, and
 - d. that Monitor has declared that the vote was invalid.

Part 9 Death of a candidate during a contested Election

47. Countermand or abandonment of poll on death of candidate

- 1) If, at a contested Election, proof is given to the returning officer's satisfaction before the result of the Election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to
 - a. countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that Constituency or Class, and
 - b. order a new Election, on a date to be appointed by him or her in consultation with the Trust, within the period of 32 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- 2) Where a new Election is ordered under rule 47(1), no fresh nomination is necessary for any candidate who was validly nominated for the Election where the poll was countermanded or abandoned.
- 3) Where a poll is abandoned under rule 47(1)(a), rules 47(4) to 47(7) are to apply.
- 4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- 5) The returning officer is to:
 - a. count and record the number of ballot papers that have been received, and
 - b. seal up the ballot papers into packets, along with the records of the number of ballot papers.
- 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 Trust to which the Election relates, and
 - d. the Constituency, or Class within a Constituency, to which the Election relates.
- 7) Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 47(4) to 47(6), the returning officer is to deliver them to the Chairman of the Trust, and rules 45 and 46 are to apply.

Part 10 Election expenses and publicity

Election expenses

48. Election expenses

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

49. Expenses and payments by candidates

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

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

The Trust reserves the right to inspect receipts and other evidence submitted by or demanded of the candidate so as to demonstrate compliance with this requirement.

50. Election expenses incurred by other persons

- 1) No person may:
 - a. incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's Election, whether on that candidate's behalf or otherwise, or
 - b. give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an Election.
- 2) Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 51 and 52.

Publicity

51. Publicity about Election by the Trust

- 1) The Trust may:
 - a. compile and distribute such information about the candidates, and
 - b. organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.
- 2) Any information provided by the Trust about the candidates, including information compiled by the Trust under rule 52, must:
 - a. be objective, balanced and fair,
 - b. be equivalent in size and content for all candidates,
 - c. be compiled and distributed in consultation with all of the candidates standing for Election, and
 - d. not seek to promote or procure the Election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- 3) Where the Trust proposes to hold a meeting to enable the candidates to speak, the Trust must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the Trust 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.

52. Information about candidates for inclusion with voting documents

- 1) The Trust must compile information about the candidates standing for Election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 2) The information must consist of a statement submitted by the candidate of no more than 100 words.

53. Meaning of "for the purposes of an Election"

- 1) In this Part, the phrase "for the purposes of an Election" means with a view to, or otherwise in connection with, promoting or procuring a candidate's Election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's Election" is to be construed accordingly.
- 2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part II Questioning Elections and the consequence of irregularities

54. Application to question an Election

- 1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor.
- 2) An application may only be made once the outcome of the Election has been declared by the returning officer.
- 3) An application may only be made to 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.
- 4) The application must:
 - a. describe the alleged breach of the rules or electoral irregularity, and
 - b. be in such a form as Monitor may require.
- 5) The application must be presented in writing within 21 days of the declaration of the result of the Election.
- 6) If Monitor requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 7) Monitor shall delegate the determination of an application to a person or persons to be nominated for the purpose of Monitor.
- 8) The determination by the person or persons nominated in accordance with rule 54(7) shall be binding on and shall be given effect by the Trust, the applicant and the Members of the Constituency (or Class within a Constituency) including all the candidates for the Election to which the application relates.
- 9) Monitor may prescribe rules of procedure for the determination of an application including costs.

Part 12

Miscellaneous

55. **Secrecy**

1) The following persons:

- a. the returning officer,
- b. the returning officer's staff,

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

- c. the name of any Member of the Trust who has or has not been given a ballot paper or voted,
- d. the unique identifier on any ballot paper,
- e. the candidate for whom any person has voted for on any particular ballot paper.

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

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

56. **Prohibition of disclosure of vote**

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

57. **Disqualification**

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

- a. a Member of the Trust,
- b. an employee of the Trust,
- c. a Director of the Trust, or
- d. employed by or on behalf of a person who has been nominated for Election.

58. **Delay in postal service through industrial action or unforeseen event**

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

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

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

Annex 3: Local authorities authorised for the purposes of appointing Local Authority Governors

- 1 Derbyshire Local Government Association (or any alternative body notified to the Trust for this purpose) will co-ordinate the appointment of three Local Authority governors.
- 2 One Governor must come from the Derbyshire County Council to reflect social care expertise and the remaining two places will be drawn from:
 - a) Amber Valley Borough Council
 - b) Bolsover District Council
 - c) Chesterfield Borough Council
 - d) Derbyshire Dales District Council
 - e) High Peak Borough Council
 - f) North East Derbyshire District Council
- 3 The process of appointment shall be agreed with the Secretary in accordance with paragraph 8.8 of this Constitution.