

CONSTITUTION

INDEX

1.	INTERPRETATION AND DEFINITIONS.....	4
2.	NAME	6
3.	PRINCIPAL PURPOSE	6
4.	AMENDMENT OF THE CONSTITUTION	6
5.	POWERS.....	7
6.	INDEMNITY	7
7.	MEMBERSHIP.....	7
8.	MEMBERSHIP CONSTITUENCIES.....	8
9.	RESTRICTION ON MEMBERSHIP	8
10.	MEMBER'S MEETINGS.....	10
11.	COUNCIL OF GOVERNORS – COMPOSITION.....	10
12.	COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS.....	11
13.	COUNCIL OF GOVERNORS – TENURE AND VACANCIES	11
14.	COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL	12
15.	COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS	14
16.	COUNCIL OF GOVERNORS – STANDING ORDERS	14
17.	COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL	15
18.	COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS.....	15
19.	COUNCIL OF GOVERNORS – TRAVEL EXPENSES	15
20.	COUNCIL OF GOVERNORS – NON COMPLIANCE WITH THE CODE OF CONDUCT FOR GOVERNORS	15
21.	BOARD OF DIRECTORS – COMPOSITION	16
22.	BOARD OF DIRECTORS – GENERAL DUTY	17
23.	BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON EXECUTIVE DIRECTOR	17
24.	BOARD OF DIRECTORS – APPOINTMENT, REAPPOINTMENT AND REMOVAL OF THE CHAIR AND OTHER NON EXECUTIVE DIRECTORS.....	17
25.	BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE DEPUTY CHAIR	18
26.	CHAIR AND OTHER NON EXECUTIVE DIRECTORS - TENURE.....	18
27.	BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS.....	18
28.	BOARD OF DIRECTORS – DISQUALIFICATION	19
29.	BOARD OF DIRECTORS – MEETINGS.....	20
30.	BOARD OF DIRECTORS – STANDING ORDERS	20
31.	BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS..	20
32.	BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE...	21
33.	RESOLUTION OF DISPUTES BETWEEN THE BOARD OF DIRECTORS AND COUNCIL OF GOVERNORS	22
34.	PROPOSED MERGERS, ACQUISITIONS, SEPARATIONS AND DISSOLUTIONS	22
35.	SIGNIFICANT TRANSACTIONS	22
36.	MATERIAL TRANSACTIONS.....	23

37.	REGISTERS	23
38.	ADMISSION TO AND REMOVAL FROM THE REGISTERS	23
39.	SECRETARY	24
40.	REGISTERS – INSPECTION AND COPIES.....	24
41.	DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION	24
42.	AUDITOR.....	26
43.	AUDIT COMMITTEE	27
44.	ACCOUNTS.....	27
45.	ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK.....	28
46.	PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS	29
47.	CUSTODY OF SEAL AND SEALING OF DOCUMENTS.....	29
48.	SIGNATURE OF DOCUMENTS.....	30
	ANNEX 1 – THE PUBLIC CONSTITUENCIES.....	31
	ANNEX 2 – THE STAFF CONSTITUENCY	32
	ANNEX 3 – MEMBERS’ MEETINGS	33
	ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS.....	36
	ANNEX 5 – ELECTION RULES.....	37
	ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS.....	59
	ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS.....	76
	ANNEX 8 - PROTOCOL FOR THE ATTENDANCE OF MEMBERS OF THE PUBLIC AT MEETINGS OF THE BOARD OF DIRECTORS AND COUNCIL OF GOVERNORS HELD IN PUBLIC.....	90

1. Interpretation and Definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

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

the **2006 Act** is the National Health Service Act 2006.

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

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

the **Comptroller and Auditor General** is the individual engaged in the position of Comptroller and Auditor General to the National Audit Office (UK government department) or its statutory successor from time to time.

“**ACCOUNTING OFFICER**” is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act and shall be the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

“**ANNUAL MEMBERS MEETING**” is defined in paragraph 10 of the constitution

“**BOARD**” shall mean the Board of Directors.

“**COUNCIL OF GOVERNORS**” means the Council of Governors of the Trust as constituted by the Constitution.

“**BUDGETS**” shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

“**CHAIR**” is the person appointed by the Council of Governors to lead the Board and to ensure it successfully discharges its overall responsibility for the Trust as a whole. The expression “the Chair of the Trust” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

“**CHIEF EXECUTIVE**” shall mean the Chief Executive Officer of the Trust.

“**COMMITTEE**” shall mean a committee appointed by the Board.

“**COMMITTEE MEMBERS**” shall be persons formally appointed by the Board to sit on or to chair specific committees.

“**CONSTITUTION**” means this constitution and all annexes to it.

“DEPUTY CHAIR” means the Non Executive Director appointed by the Council of Governors of the Trust to take on the Chair’s duties if the Chair is absent for any reason.

“DIRECTOR” shall mean a person appointed as a Director of the Trust in accordance with the Constitution and includes the Chair.

“FINANCE DIRECTOR” shall mean the Chief Finance Officer of the Trust.

“FUNDS HELD ON TRUST” shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept. Such funds may or may not be charitable.

“HE/HER & HIS/HERS” shall refer to the appropriate postholder and are to be read as the gender of that post which may change.

“LEAD GOVERNOR” (and **“VICE CHAIR”**) means the Governor elected by Governors to fulfil the role described by Monitor and Chair the Council of Governors in specific circumstances detailed within the Constitution.

“MEMBER OF THE TRUST” shall mean a person whose name appears on the Register of Members and is entitled under the Constitution to be a Member of the Trust.

“MERGER”, “ACQUISITION”, “SEPARATION”, “DISSOLUTION” shall be interpreted as defined in the Health & Social Care Act 2012

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

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

“NOMINATED OFFICER” means an officer charged with the responsibility of discharging specific tasks within Standing Orders and Standing Financial Instructions.

“NON EXECUTIVE DIRECTOR” means a Director, including the Chair, who does not hold an executive office at the Trust.

“OFFICER” means an employee of the Trust.

“SECRETARY” means the Secretary of the Trust or any other person or body corporate appointed to perform the duties of the Secretary of the Trust, including a joint, assistant or Deputy Secretary, and monitor the Trust’s compliance with the law, the Constitution and the Regulatory Framework.

“SFIs” means Standing Financial Instructions

“SIGNIFICANT TRANSACTIONS” and **“MATERIAL TRANSACTIONS”** shall be

interpreted as defined in Section 31 and 32 of the Trust's Constitution.

“**SOs**” means Standing Orders

“**TRUST**” means Mid Staffordshire NHS Foundation Trust.

“**VOLUNTARY ORGANISATION**” is a body, other than a public or local authority, the activities of which are not carried on for profit.

2. Name

- 2.1 The name of the Foundation Trust is Mid Staffordshire NHS Foundation Trust (the Trust).

3. Principal Purpose

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

4. Amendment of the Constitution

- 4.1 The Constitution shall be reviewed annually by the Trust and amended only if –
- 4.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments,
and
 - 4.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 4.2 Amendments made under paragraph 4.1 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.

- 4.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
- 4.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 4.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 4.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 4.5 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.

5. Powers

- 5.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 5.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 5.3 Any of these powers may be delegated to a committee of directors or to an executive director.

6. Indemnity

- 6.1 Members of the Council of Governors, Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 6.2 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors' and Officers' Liability.

7. Membership

- 7.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 7.1.1 a public constituency
 - 7.1.2 a staff constituency

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

7.3 All members of the Trust should be under duty to notify the Secretary of any change in their particulars, which may affect their entitlement as a member.

8. Membership Constituencies

8.1 Public Constituency

8.1.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust if he is not eligible to become a member of the staff constituency.

8.1.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.

8.1.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

8.2. Staff Constituency

8.2.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:

8.2.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.2.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.

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

8.2.3 An individual who is:

- eligible to become a member of the Staff Constituency; and
- invited by the Trust to become a member of the Staff Constituency shall become a member of the Trust as a member of the Staff Constituency subject to the provisions of paragraph 8.2.1 of this Constitution.

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

9. Restriction on membership

9.1 A person may not become a member of the Trust if they are less than 16 years of age.

9.2 A person may not become or remain a member of the Trust if they have been convicted of an offence involving assault or abusive words or behaviour where the offence took place on Trust property, or in connection with receiving services

- from the Trust have received a "red card" under the Trust's procedure for care of patients who are violent or abusive or if they have been involved as a perpetrator in a serious incident of violence at any of the Trust Hospitals or against the Trust employees or other persons who exercise functions for the purpose of the Trust or against volunteers.
- 9.3 A person may not become a member of the Trust if he is subject to any of the orders under the Sexual Offences Act 2003.
- 9.4 A person may not become or remain a member of the Public Constituency if they are eligible to a member of the Staff Constituency.
- 9.5 A person may not be a member of more than one Constituency.
- 9.6 Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member they should give the member 14 days written notice to show why his name should not be removed from the Register of Members. On receipt of such information supplied by the member, the Secretary, may, if he considers it appropriate, remove the member from the Register of Members.
- 9.7 In the event of any dispute about the entitlement to membership the dispute should be referred to the Secretary who shall make a determination on the point in issue. If the member is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Chair whose decision will be final.
- 9.8 A member shall cease to be member in the following circumstances:
- 9.8.1 Death
- 9.8.2 Resignation by notice to the Secretary.
- 9.8.3 Ceasing to fulfil the requirements to become a member of the Public Constituency or the Staff Constituency.
- 9.8.4 They are expelled from membership under this Constitution.
- 9.8.5 If it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with the process approved by the Council of Governors, they fail to establish that they wish to continue to be a member of the Trust.
- 9.8.6 A member may be expelled by resolution approved by not less than two-thirds of the members of the Council of Governors present and casting a vote at a meeting.
- 9.9 In respect of complaints about members the following procedure is to be adopted:
- 9.9.1 The Secretary should be notified of any complaint made about a

member who it is alleged to have acted in a way detrimental to the interests of the Trust.

9.9.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considered appropriate to ensure that member's point of view is heard and may either dismiss the complaint and take no further action or arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

9.9.3 If the resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

9.9.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.

9.9.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in his absence.

9.10 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel the member was carried.

9.11 No person who has been expelled from membership is to be readmitted except by resolution carried by the votes of two-thirds of the members of the Council of Governors present and casting a vote at a meeting.

10. Member's Meetings

10.1 The Trust will publicise and hold an Annual Members Meetings open to members of the public which will be convened by order of the Council of Governors in accordance with the provisions in Annex 3.

10.2 The provisions with regard to Members' meetings are set out in Annex 3.

11. Council of Governors – composition

11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

11.2 The composition of the Council of Governors is specified in Annex 4.

11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, in the case of the Public Constituency, by their area within that constituency. The number of governors to be elected by the Staff Constituency and by each area of the Public Constituency is specified in Annex 4.

11.4 Lead Governor

11.4.1 The Lead Governor is elected annually by the Governors.

11.4.2 The Lead Governor is also the Vice-Chair of the Council of Governors

12. Council of Governors – election of Governors

12.1 Elections for elected members of the Council of Governors will be conducted on the “first past the post” basis and in accordance with the Model Rules for Elections, as may be varied from time to time.

12.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 5.

12.3 A variation of the model rules, other than a unilateral variation by the Trust, shall not constitute a variation of the terms of this Constitution.

12.4 An election, if contested, shall be by secret ballot.

13. Council of Governors – tenure and vacancies

13.1 Elected Governors

13.1.1 An elected governor may hold office for a period of up to 3 years.

13.1.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or in the case of the Public Constituency of the area of the Constituency by which he was elected.

13.1.3 An elected Governor shall be eligible for re-election at the end of his term but may not hold office for more than 9 consecutive years.

13.2 Appointed Governors

13.2.1 An appointed Governor may hold office for a term of up to 3 years.

13.2.2 An appointed Governor shall cease to hold office if the appointing organisation terminates the appointment.

13.2.3 An appointed Governor shall be eligible for re-appointment at the end of his term.

13.2.4 An appointed Governor may hold office for a maximum of 9 years.

13.4 Termination of Tenure of Governors

13.4.1 A Governor may resign from office at any time during the term of the office by giving notice in writing to the Secretary.

13.4.2 If a Governor fails to attend at least 3 consecutive meetings of the Council of Governors in any 12 months, his tenure of office is to be immediately terminated unless the other Governors are satisfied that:

13.4.2.1 the absence was due in their opinion to a reasonable cause; and

13.4.2.2 he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.

13.5 Vacancies amongst Governors

13.5.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.

13.5.2 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

13.5.3 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:

13.5.3.1 to call an election within three months to fill the seat for the remainder of that term of office; or

13.5.3.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat for any unexpired period of the term of office; or

13.5.3.3 to leave the vacancy outstanding until the next annual election provided that the vacancy shall not be for more than nine months.

14. Council of Governors – disqualification and removal

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

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

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

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

- 14.1.4 he is subject of a Sexual Offences Prevention Order under the Sexual Offences Act 2003.
 - 14.1.5 he is disqualified as a Company Director under the Company Director Disqualification Act 1986 in England and Wales.
 - 14.1.6 he is a member of a patient forum constituted under the National Health Service Reform and Healthcare Professions Act 2002.
 - 14.1.7 he is under 18 years of age.
 - 14.1.8 he has within the preceding 2 years been dismissed, otherwise than by redundancy or ill health, from any paid employment with a Health Service Body.
 - 14.1.9 he is a person whose tenure of Office as Chair or as member or a 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 none disclosure of a pecuniary interest.
 - 14.1.10 he is an executive director or non-executive director of the Trust or a full member of any committee of Board, or (but only if an elected Governor) a Governor, director, Chair, Chief Executive Officer of another NHS Foundation Trust or any other NHS body.
 - 14.1.11 he has had his name removed from any list maintained by any NHS Commissioning Board pursuant to Parts 4, 5, 6 or 7 of the NHS Act 2006 and/or Regulations made under those Parts, and has not subsequently had his name included on such a list, and due to the reason(s) for such removal, he is not considered suitable by the Trust's Executive Director responsible for Human Resources
 - 14.1.12 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs.
 - 14.1.13 if any amount properly owing to the Trust by the Governor remains unpaid for over 30 days without good cause.
 - 14.1.14 he has failed to sign and deliver to the Secretary a statement in the form required by the Council of Governors confirming acceptance of the Code of Conduct for Governors.
- 14.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office, he shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Secretary at the time of his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon dispatch of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor.
- 14.3 Governors must be at least 18 years of age at the date they are nominated for

election.

14.4 A Governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining Governors present and casting a vote at a meeting of the Council of Governors on the grounds that they have committed a serious breach of the Governors Code of Conduct.

14.5 Council of Governors Transitional Arrangements

14.5.1 Not less than 50% of the initial Public Governors and of the initial Staff Governors who polled the highest votes in each constituency will serve a term of office ending at the conclusion of the Annual Members Meeting in 2010. The remaining initial Public Governors and initial Staff Governors will serve a term of office ending at the conclusion of the annual members meeting in 2009.

14.5.2 For the purposes of eligibility to seek re-election or to be reappointed as Governors under this Constitution, the period between their election or appointment as initial Governors and the conclusion of the Annual Members Meeting in 2008 will be treated as a year.

15. Council of Governors – meetings of Governors

15.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or, in his absence, the Deputy Chair appointed in accordance with the provisions of paragraph 23.1, shall preside at meetings of the Council of Governors.

15.2 All meetings of the Council of Governors are open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial or personal confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting in accordance with the protocol under Annex 8.

15.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors can require one or more of the directors to attend a meeting.

15.4 Further provisions as to the meetings of the Council of Governors are set out in the Standing Orders for the Practice and Procedure of the Council of Governors at Annex 6.

16. Council of Governors – Standing Orders

16.1 The Standing Orders for the Practice and Procedure of the Council of Governors, as may be varied from time to time in accordance with paragraph 4, are at Annex 6.

17. Council of Governors – referral to the Panel

17.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—

17.1.1 to act in accordance with its constitution, or

17.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

17.2 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.

18. Council of Governors - conflicts of interest of Governors

18.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Practice and Procedures of the Council of Governors at Annex 6 shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

19. Council of Governors – travel expenses

19.1 The Trust may reimburse members of the Council of Governors travel and other expenses reasonably and necessarily incurred in carrying out their duties, subject to the provisions of the Trust policy on the reimbursement of such expenses, which shall be approved by the Board of Directors and reviewed by the Board of Directors from time to time as considered necessary. Governors shall not receive remuneration in respect of carrying out their role as a Governor.

20. Council of Governors – Non Compliance with the Code of Conduct for Governors

20.1 Non compliance with the Code at Appendix 1 to Annex 6 may result in action being taken as follows:

20.1.1 Where non compliance takes place, the Chair shall be authorised to take such action as may be immediately required, including the exclusion of the person concerned from a meeting.

20.1.2 Where such misconduct is alleged, it shall be open to the Council of Governors to decide, by a simple majority of those present, to lay a formal charge of non compliance.

20.1.3 Notification to the Governor in writing of the charge/s, detailing the specific behaviour, which is considered to be non compliant with the

Code of Conduct, and inviting and considering their response within a defined timescale.

- 20.1.4 Inviting the Governor to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 20.2 If a Governor is considered to have acted in a manner inconsistent with the Code of Conduct the Governor may be removed from the Council of Governors by resolution approved by not less than two thirds of the remaining Governors present and casting a vote at a meeting of the Council of Governors.
- 20.3 This Code of Conduct does not limit or invalidate the right of the Governor or the Trust to act under the Constitution.
- 20.4 If a Governor fails to declare a material interest as defined below, and participates in a meeting where the interest is relevant he may be removed by resolution passed by a simple majority of the remaining Governors.
- 20.5 If a Governor refuses to undertake training which the Council of Governors requires all Governors to undertake, he may be removed by resolution passed by a simple majority of the remaining Governors.
- 20.6 In the case of Non Compliance with the Code of Conduct for Governors by an appointed Governor the appointing organisation terminates the appointment.
- 20.7 In the case of Non Compliance with the Code of Conduct for Governors by an elected Governor, he ceases to be a member of the Constituency he represents.

21. Board of Directors – composition

- 21.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non Executive Directors.
- 21.2 Provided always that the number of Non Executive Directors including the Chair shall always exceed the number of Executive Directors.
- 21.3 Subject to paragraph 20.2, the Board of Directors is to comprise:
 - 20.3.1 A Non Executive Director Chair; and
 - 20.3.2 between 4 and 6 Non Executive Directors; and
 - 20.3.3 between 4 and 6 Executive Directors.
- 21.4 One of the Executive Directors shall be the Chief Executive.
- 21.5 The Chief Executive shall be the Accounting Officer.
- 21.6 One of the Executive Directors shall be the Director of Finance.
- 21.7 One of the Executive Directors is to be a registered medical practitioner or a

registered dentist (within the meaning of the Dentists Act 1984).

- 21.8 One of the Executive Directors is to be a registered nurse or a registered midwife.

22. Board of Directors – general duty

- 22.1 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.

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

- 23.1 A person may be appointed as a Non Executive Director only if –

23.1.1 he is a member of the Public Constituency, and

23.1.2 he is not disqualified by virtue of paragraph 26 below.

24. Board of Directors – appointment, reappointment and removal of the Chair and other Non Executive Directors

- 24.1 The Chair and Non Executive Directors will be appointed from the members of the Public Constituency.

- 24.2 Governors at a meeting of the Council of Governors shall appoint or reappoint and can remove the Chair of the Trust and the other Non Executive Directors.

- 24.3 Selection of the Chair and Non-Executive Directors will be undertaken by a Nominations and Remuneration Committee or other such Committee of Governors with that statutory responsibility comprising Members of the Council of Governors and chaired by the Chair of the Trust or Deputy Chair of the Trust when the appointment of the Chair is being considered. In the event that the Chair or Deputy Chair could not preside, the Senior Independent Director will Chair the meeting.

- 24.4 The Nominations and Remuneration Committee will be advised by and take account of the views of the Nominations Advisory Panel comprising three members of the Board of Directors, include at least one Non Executive Director who will take human resources and legal advice.

- 24.5. The Nominations Advisory Panel will identify the skills and experience required for the post of Chair and Non Executive Directors and will prepare a suitable job role, person specification and terms and conditions which the Nominations and Remuneration Committee must take into account in identifying suitable candidates.

- 24.6. The Nominations and Remuneration Committee will be supported by the Trust's Human Resources Department to ensure good recruitment and selection practice.

- 24.7. Following an agreed selection and interview process, the Nominations and Remunerations Committee will recommend a preferred candidate to a meeting of the Council of Governors for approval. In the event that the Nominations and Remuneration Committee is unable to agree a preferred candidate the names of all appointable candidate(s) will be submitted to a meeting of the Council of Governors for a decision to be made by a simple majority of those present at the meeting.
- 24.8. Removal of the Chair or a Non Executive Director for due cause will be considered at a meeting of the Council of Governors on receipt of a request from the Board of Directors or by formal notice proposing removal from office. Such a resolution shall require three quarters of the total membership of the Council of Governors voting in favour to be passed. Governors will be expected to take appropriate human resources and legal advice prior to removing the Chair or a Non Executive Director. The Council of Governors may establish a Committee to investigate the circumstances and report to it thereon.
- 24.9 The Vice Chair of the Council of Governors will preside at meetings of the Council in connection with the appointment, reappointment or removal of the Chair.
- 25. Board of Directors – appointment and removal of the Deputy Chair**
- 25.1 Governors at a meeting of the Council of Governors shall appoint one of the Non Executive Directors as a Deputy Chair of the Trust and can remove the Deputy Chair.
- 25.2 Removal of the Deputy Chair for due cause will be considered by a meeting of the Council of Governors on receipt of a request from the Board of Directors or by formal notice proposing removal from office. Such a resolution shall require the approval of not less than three-quarters of the members of the Council of Governors voting in favour to be passed.
- 26. Chair and Other Non Executive Directors - tenure**
- 26.1 The Chair and other Non Executive Directors may hold office for a period of up to three years.
- 26.2 The Chair and other Non Executive Directors shall be eligible for reappointment at the end of their term of office but may not hold office for more than six years.
- 27. Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**
- 27.1 The Chief Executive will be appointed by the Non Executive Directors including the Chair. They may seek independent advice regarding the appointment if it is considered appropriate.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors by simple majority of those present at the meeting.

- 27.3 The Chief Executive may be removed from office by Non Executive Directors meeting as a Nominations and Remuneration Committee by simple majority of all Non Executive Directors. The Chief Executive has the right to appeal against his or her removal in accordance with employment law.
- 27.4 The Nominations and Remuneration Committee consisting of the Chair, the other Non Executive Directors and the Chief Executive shall appoint or remove the other Executive Directors by a simple majority of those present at the meeting.

28. Board of Directors – disqualification

- 28.1 The following may not become or continue as a member of the Board of Directors:
- 28.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
 - 28.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it.
 - 28.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
 - 28.1.4 in the case of a Non Executive Director, he is no longer a member of the public constituency.
 - 28.1.5 he is a person whose tenure of office as a Chair or as a Member or Director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
 - 28.1.6 he has had his name removed from any list maintained by the NHS Commissioning Board pursuant to Parts 4, 5, 6 or 7 of the NHS Act 2006 and/or Regulations made under those Parts, and has not subsequently had his name included on such a list, and due to the reason(s) for such removal, he is not considered suitable by the Trust's Chief Executive.
 - 28.1.7 he has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body or other organisation providing substantial healthcare services to the NHS.
 - 28.1.8 he is an Executive or Non Executive Director of another NHS Trust, or a Governor, Director, Chair, Chief Executive of another NHS Body.
 - 28.1.9 he is the subject of a Sexual Offences Prevention Order under the

Sexual Offences Act 2003.

28.1.10 he is disqualified as a Company Director under the Company Directors Disqualification Act 1986 in England and/or Wales.

28.1.11 he is incapable by reason of mental disorder, illness or injury of managing or administering his property and affairs.

29. Board of Directors – Meetings

29.1 All meetings of the Board of Directors are open to members of the public unless the Board of Directors decides otherwise in relation to all or part of a meeting for reasons of commercial or personal confidentiality or for other special reasons. The Chair may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting in accordance with the protocol under Annex 8.

29.2 Further provisions as to the meetings of the Board of Directors are set out in the Standing Orders for the Practice and Procedure of the Board of Directors at Annex 7.

30. Board of Directors – Standing Orders

30.1 The Standing Orders for the Practice and Procedure of the Board of Directors, as may be varied from time to time in accordance with paragraph 4, are at Annex 7.

31. Board of Directors - conflicts of interest of Directors

31.1 The duties that a director of the trust has by virtue of being a director include in particular –

31.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.

31.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

31.2 The duty referred to in sub-paragraph 31.1.1 is not infringed if –

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

31.2.2 The matter has been authorized in accordance with the constitution.

31.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

31.4 In sub-paragraph 31.1.2, “third party” means a person other than –

- 31.4.1 The trust, or
- 31.4.2 A person acting on its behalf.
- 31.5 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.
- 31.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 31.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 31.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 31.9 A director need not declare an interest –
 - 31.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 31.9.2 If, or to the extent that, the directors are already aware of it;
 - 31.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
 - 31.9.3.1 By a meeting of the Board of Directors, or
 - 31.9.3.2 By a committee of the directors appointed for the purpose under the constitution.

32. Board of Directors – remuneration and terms of office

- 32.1 Governors at a meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non Executive Directors.
- 32.2 The remuneration and allowances for Non-Executive Directors including the Chair will be considered by the Nominations and Remuneration Committee of the Council of Governors or other such Committee of Governors with that statutory responsibility. The Nominations and Remuneration Committee will consider recommendations from the Board of Directors and have due regard to practice in similar organisations. The Committee will be supported by the Human Resources Department and the Secretary. The Nominations and Remuneration Committee will report to the Council of Governors who will decide the remuneration and allowances of Non Executive Directors at a meeting of the Council of Governors.
- 32.3 The Trust shall establish a committee of the Chair and the other Non Executive

Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

33. Resolution of Disputes between the Board of Directors and Council of Governors

33.1 In the event of a dispute between the Council of Governors and the Board of Directors in the first instance the Chair on the advice of the Secretary, and such other advice that the Chair may see fit to obtain, shall seek to resolve the dispute.

33.2 If the Chair is unable to resolve the dispute he shall appoint a special Committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute.

33.3 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute to an external mediator appointed by the Centre for Dispute Resolution or such other organisation as he considers appropriate. The result of the mediation will be final and binding on the Council of Governors and the Board of Directors.

34 Proposed Mergers, Acquisitions, Separations and Dissolutions

34.1 Any proposal for an application to Monitor, approved by the Board for a proposed merger, acquisition, separation or dissolution of all or part of the Trust or acquisitions by the Trust shall also require the approval of more than half of the Members of the Council of Governors.

35. Significant Transactions

35.1 A Significant Transaction is defined as a transaction that meets any one of the following criteria:

35.1.1 The gross assets (total of fixed assets and current assets), subject to the transaction, divided by the gross assets of the Trust is greater than 25%.

35.1.2 The income attributable to the assets or the contract associated with the transaction, divided by the income of the Trust is greater than 25%.

35.1.3 The gross capital (the market value of the target's shares and debt securities plus the excess of current liabilities over current assets) of the company or business being acquired / divested, divided by the total capital (tax payers' equity) of the Trust following completion or the effects on the total capital of the Trust resulting from a transaction is greater than 25%.

35.2 Any proposal approved by the Board of Directors for a significant transaction shall also require the approval of more than half of the Members of the Council of Governors.

36. Material Transactions

- 36.1 A Material Transaction is defined as a transaction that meets any one of the following criteria:
- 36.1.1 The gross assets (total of fixed assets and current assets), subject to the transaction, divided by the gross assets of the Trust is greater than 10%, but not greater than 25%.
 - 36.1.2 The income attributable to the assets or the contract associated with the transaction, divided by the income of the Trust is greater than 10%, but not greater than 25%.
 - 36.1.3 The gross capital (the market value of the target's shares and debt securities plus the excess of current liabilities over current assets) of the company or business being acquired / divested, divided by the total capital (tax payers' equity) of the Trust following completion or the effects on the total capital of the Trust resulting from a transaction is greater than 10%, but not greater than 25%.
- 36.2 The Board of Directors is required to consult with the Council of Governors on any proposal of the Board for a material transaction.

37. Registers

- 37.1 The Trust shall have:
- 37.1.1 a register of members showing, in respect of each member, the constituency to which he belongs and, in the case of the public constituency, the area to which he belongs;
 - 37.1.2 a register of members of the Council of Governors;
 - 37.1.3 a register of interests of Governors;
 - 37.1.4 a register of Executive and Non Executive Directors; and
 - 37.1.5 a register of interests of the Executive and Non Executive Directors.
- 37.2 The Registers may be kept in either or both paper or electronic format.

38. Admission to and removal from the registers

- 38.1 The Secretary shall have removed from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution.

39. Secretary

- 39.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Director of Finance. The Secretary's function shall include:
- 39.1.1 Acting as Secretary to the Council of Governors, the Board of Directors and their Committees.
 - 39.1.2 Summoning and attending all members' meetings, meetings of the Council of Governors and the Board of Directors and keeping the minutes of those meetings.
 - 39.1.3 Keeping the register of members and other registers and books required by this Constitution to be kept.
 - 39.1.4 Having charge of the Trust's seal.
 - 39.1.5 Ensuring the publication to members in an appropriate form, information which they should have about the Trust's affairs.
- 39.2 The Secretary is to be appointed and removed by a Committee consisting of the Chair, the Chief Executive, and at least one Non Executive Director. The appointment and removal of the Secretary shall require the approval of the Council of Governors.

40. Registers – inspection and copies

- 40.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 40.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 40.3 So far as the registers are required to be made available:
- 40.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 40.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 40.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

41. Documents available for public inspection

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

- 41.1.1 a copy of the current Constitution;
 - 41.1.2 a copy of the latest Annual Accounts and of any report of the auditor on them;
 - 41.1.3 a copy of the latest Annual Report;
- 41.2 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:
- 41.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
 - 41.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 41.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 41.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 41.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 41.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 41.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 41.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 41.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
 - 41.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

41.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

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

42. Auditor

42.1 The Trust shall have an external financial auditor and shall provide the external financial auditor with every facility and all information, which he may reasonably require for the purpose of fulfilling his functions under the 2006 Act.

42.2 A person may only be appointed as the external financial auditor if he (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.

42.3 The Council of Governors shall appoint or remove the external financial auditor at a meeting of the Council of Governors:

42.3.1 The Trust will establish a Committee chaired by a Non-Executive Director comprising members of the Audit Committee and the Council of Governors to specify the role of the Trust's External Financial Auditors. The Committee may take independent advice if it so wishes.

42.3.2 The service, as specified will be put to tender by the firms invited, which have been pre-qualified as regards capability and capacity.

42.3.3 The Committee will evaluate the tenders and recommend the award of the contract appropriately. The decision will be confirmed at a General Meeting of the Council of Governors. The tender process will be operated under the terms of the Trust's Standing Orders.

42.3.4 The Auditors may be removed from office, for due cause by resolution of the Council of Governors passed by a simple majority of those present at the meeting.

42.4 The Auditors may resign by giving notice to the Council of Governors via the Secretary. The Governors will require the Auditors to give reasons for the resignation and to detail outstanding issues of which the Council of Governors should be aware.

42.5 An officer of the Audit Commission may be appointed as the external financial auditor with the agreement of the Audit Commission.

42.6 The external financial auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Regulator on standards, procedures and techniques to be adopted.

42.7 The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the Trust's performance.

42.8 The Trust may appoint additional auditors over and above the Trust's Financial Auditors.

43. Audit Committee

43.1 The Trust shall establish a committee of Non Executive Directors excluding the Chair as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

44. Accounts

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

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

44.3 The accounts are to be audited by the Trust's external financial auditor.

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

44.4.1 the accounts;

44.4.2 the records relating to them; and

44.4.3 any report of the Auditor on them.

44.5 The Trust shall prepare in respect of each financial year Annual Accounts in such form as Monitor may with the approval of the Secretary of State direct.

44.6 Monitor may with the approval of the Secretary of State for Health direct the Trust:

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

44.6.2 that any accounts prepared by it by virtue of paragraph 38.6.1 above are to be audited in accordance with such requirements as may be specified in the direction.

44.7 In preparing its Annual Accounts or in preparing any accounts by virtue of paragraph 44.5 above, the Trust must comply with any directions given by Monitor with the approval of the Secretary of State for Health as to:

44.7.1 the methods and principles according to which the Annual Accounts must be prepared; and/or

44.7.2 the content and form of the Annual Accounts.

44.8 The Trust must:

- 44.8.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and
- 44.8.2 send copies of the Annual Accounts, and any report of the Auditor on them to Monitor within such a period as Monitor may direct.
- 44.9 The Trust must send a copy of any accounts prepared by virtue of paragraph 44.5 above and a copy of any report of the Auditor to Monitor within such a period as Monitor may direct.
- 44.10 The functions of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

45. Annual report, forward plans and non-NHS work

- 45.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 45.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 45.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 45.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 45.5 The Board of Directors will approve the Annual Accounts and Annual Report and will receive any Report of the Auditor on the Annual Accounts.
- 45.6 The Auditors will submit their report to the Council of Governors and the Board of Directors.
- 45.7 The Directors will present the Annual Report, Annual Accounts and any Auditors Report for consideration at a meeting of the Council of Governors in public.
- 45.8 The Directors will present the Annual Report, Annual Accounts and Audit Report to Members of the Trust at the Annual Members Meeting.
- 45.9 The Board of Directors will make available copies of the Annual Report and the Annual Accounts and the Auditors Report to all Members.
- 45.10 Each forward plan must include information about:
 - 45.10.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
 - 45.10.2 the income it expects to receive from doing so.
- 45.11 Where a forward plan contains a proposal that the Trust carry on an activity of a

kind mentioned in sub-paragraph 39.10.1 the Council of Governors must:

45.11.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its Principal Purpose or the performance of its other functions, and

45.11.2 notify the Directors of the Trust of its determination.

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

46. Presentation of the annual accounts and reports to the Governors and members

46.1 The following documents are to be presented to the Council of Governors at a meeting of the Council of Governors:

46.1.1 The Annual Accounts.

46.1.2 Any report of the auditor on them.

46.1.3 The Annual Report.

46.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

46.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 with the Annual Members' Meeting.

47. Custody of Seal and Sealing of Documents

47.1 Custody of Seal

47.1.1 The Common Seal of the Trust shall be kept by the Secretary in a secure locked place. Keys to the lock(s) should be held by the Chief Executive, Director of Finance and Secretary.

47.2 Sealing of Documents

47.2.1 The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board.

47.2.2 Where the Trust decides that a document shall be sealed the seal shall be affixed in the presence of two Directors of the Trust (one to be a Non-Executive Director) and shall be attested by them.

- 47.2.3 For the sealing of contracts the seal shall be attested by the Chief Executive or Director Finance and a Non-Executive Director
 - 47.2.4 All documents required to be a deed pursuant to the provisions of the Law of Property Act, will be executed under the common seal of the Trust.
 - 47.2.5 For the avoidance of doubt other documents will be created as deeds where the value exceeds £100,000.
 - 47.2.6 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.
- 47.3 Register of Sealing
- 47.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who attested the seal. A report of all sealing shall be made to the Trust Board at the next meeting. The report shall contain details of the seal number, the description of the document and date of sealing.
- 48. Signature of Documents**
- 48.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
 - 48.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

The Trust's Public Constituencies comprise the local government wards specified in each of the 3 public constituencies as set out below.

Constituency	Wards	Minimum Number of Members	Number of Governors
Cannock	All Wards within the boundary of Cannock Chase District Council	50	5
Stafford	All Wards within the boundary of Stafford Borough Council	50	5
Surrounding Area	All Wards within the boundary of South Staffordshire District Council	30	3
	All Wards within the boundaries of:-		
	<ul style="list-style-type: none"> • Birmingham City Council • Crewe & Nantwich Borough Council • Derbyshire County Council • Dudley Metropolitan Borough Council • East Staffordshire Borough Council • Lichfield District Council • Newcastle-under-Lyme Borough Council • Sandwell Metropolitan Borough Council • Shropshire County Council • Staffordshire Moorlands Borough Council • Stoke on Trent City Council • Tamworth Borough Council • Telford and Wrekin Council • Walsall Metropolitan Borough Council • Wolverhampton City Council 		

ANNEX 2 – THE STAFF CONSTITUENCY

The minimum number of members of the Staff Constituency shall be 50.

Constituency	Minimum Number of Members	Number of Governors
All eligible under paragraph 8 of the Constitution	50	5

ANNEX 3 – MEMBERS’ MEETINGS

1. The Trust is to hold a members’ meeting (called the Annual Members’ Meeting) within nine months of the end of each financial year.
2. All members’ meetings other than annual meetings are called special members meetings.
3. All members’ meetings are to be convened by the Secretary by order of the Council of Governors.
4. Members meetings are open to all members of the Trust, members of the Council of Governors and the Board of Directors and representatives of the Trust’s financial auditors. The Council of Governors may invite representatives of the media and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend a members’ meeting.
5. The Council of Governors may decide where a members’ meeting is to be held and may also for the benefit of members arrange for the Annual Members’ Meeting to be held in different venues each year.
6. At the annual members’ meeting:
 - 6.1 the Board of Directors shall present to the members
 - 6.1.1 the annual accounts.
 - 6.1.2 any report of the financial auditor.
 - 6.1.3 the annual report
 - 6.1.4 forward planning information for the next financial year.
 - 6.2 The Council of Governors shall present to the members:
 - 6.2.1 A report on steps taken to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership.
 - 6.2.2 Progress of the Membership Strategy.
 - 6.3 The result of the election and appointment of Governors will be announced.
 - 6.4 An agenda shall set out the business to be conducted at the meeting. The agenda shall include provision for any other business.
7. Notice of a members' meeting
 - 7.1 Notice is to be given:
 - 7.1.1 To all members;

- 7.1.2 By prominent display at the registered office and at all of the Trust's places of business; and
 - 7.1.3 On the Trust's website
- 7.2 The notice must:
 - 7.2.1 Be published at least 14 clear days before the date of the meeting.
 - 7.2.2 Be given to the Council of Governors and the Board of Directors, and to the financial auditors;
 - 7.2.3 State whether the meeting is an annual or special members' meeting;
 - 7.2.4 Give the time, date and place of the meeting, and
 - 7.2.5 Indicate the business to be dealt with at the meeting.
- 7.3 Informal notice of meetings and the timetable for submitting motions and amendments shall be published in Members' publications wherever possible in order to give Members as much advanced notice as possible.
- 7.4 Any motion for consideration at any Member's meeting shall be received in writing and shall be submitted to the Secretary at the Trust's registered office 21 clear days prior to the Annual Member's Meeting. It shall be included in the notices as set out in paragraph 7 above. Any amendment to any motion shall be received by the Secretary at the registered office by 15 clear days prior to the meeting. An amended Agenda shall be circulated at the meeting.
- 8. The quorum for a members meeting to conduct business shall be a minimum of 20 members.
- 9. It is the responsibility of the Council of Governors, the Chair of the meeting and the Secretary to ensure that at any members meeting:
 - 9.1 The issues to be decided are clearly explained;
 - 9.2 Sufficient information is provided to members to enable rational discussions to take place;
 - 9.3 Where appropriate, experts in relevant fields or representatives of special interest groups are invited to address the meeting.
- 10. The Chair will ensure that there is an opportunity during the course of the meeting for members to ask questions of Governors and Directors.
- 11. The Chair of the Trust or in his absence the Deputy Chair of the Trust shall preside at all members' meetings of the Trust. If neither the Chair nor the Deputy Chair of the Trust is present, the Council of Governors present shall elect one of the Public Governors to be Chair and if there is only one Governor present and

- willing to act they shall be Chair.
12. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned and be reconvened by the Secretary by order of the Council of Governors.
 13. A resolution put to the vote at a members' meeting shall be decided upon by a poll.
 14. Every member present at the meeting is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second or casting vote.
 15. The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

There shall be 13 Governors elected by the Public Constituencies, 5 Governors elected by the Staff Constituency and 7 appointed Governors.

Elected Governors

Each constituency shall elect the following members of the Council of Governors:

Number of Governors to be elected

Public Constituency:

Cannock	5
Stafford	5
Surrounding Area	3

Staff Constituency	5
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Appointed Governors

Each of the following local authorities may appoint a Councillor representative to be a member of the Council of Governors:

Number of Governors to be appointed

Cannock Chase District Council	1
Stafford Borough Council	1
Staffordshire County Council	1
South Staffordshire Council	1

Each of the following partnership organisations may appoint a representative to be a member of the Council of Governors.

Number of Governors to be appointed

Keele University	1
Staffordshire University	1
Stafford & Surrounds and Cannock Chase Clinical Commissioning Groups	1

ANNEX 5 – ELECTION RULES

Contents

Part 1 Interpretation

1. Interpretation

Part 2 Timetable for election

2. Timetable
3. Computation of time

Part 3 Returning Officer

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

Part 4 Stages Common to Contested and Uncontested Elections

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

Part 5 Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The Poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

- 32. Receipt of voting documents
- 33. Validity of ballot paper
- 34. Declaration of identity but no ballot paper
- 35. Sealing of packets

Part 6 – Counting the votes

- 36. Arrangements for counting of the votes
- 37. The count
- 38. Rejected ballot of papers
- 39. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- 40. Declaration of result for contested elections
- 41. Declaration of result for uncontested elections

Part 8 – Disposal of documents

- 42. Sealing up of documents relating to the poll
- 43. Delivery of documents
- 44. Forwarding of documents received after close of the poll
- 45. Retention and public inspection of documents
- 46. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- 47. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

- 48. Election expenses
- 49. Expenses incurred by candidates
- 50. Expenses incurred by other persons

Publicity

- 51. Publicity about election by the corporation
- 52. Information about candidates for inclusion with voting documents
- 53. Meaning of “for the purposes of an election”

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

1.1 In these rules, unless the context otherwise requires:

“**corporation**” means the public benefit corporation subject to this Constitution;

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

“**the regulator**” means the Independent Regulator for NHS foundation trusts; and

“**the 2006 Act**” means the National Health Service Act 2006.

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

Part 2 Timetable for election

2. Timetable

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

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

3. Computation of time

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

3.1.1 a Saturday or Sunday;

3.1.2 Christmas Day, Good Friday, or a bank holiday; or

3.1.3 a day appointed for public thanksgiving or mourning

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

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

Part 3 Returning Officer

4. Returning Officer

- 4.1 Subject to Rule 57, the Returning Officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same Returning Officer may be appointed for all those elections.

5. Staff

- 5.1 Subject to Rule 57, the Returning Officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

The corporation is to pay the Returning Officer:

- 6.1 any expenses incurred by that officer in the exercise of his or her functions, under these Rules;
- 6.2 such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

- 7.1 The corporation is to co-operate with the Returning Officer in the exercise of his or her functions under these Rules.

Part 4 Stages Common to Contested and Uncontested Elections

8. Notice of Election

- 8.1 The Returning Officer is to publish a notice of the election stating:
- 8.1.1 the constituency, or class within a constituency, for which the election is being held;
- 8.1.2 the number of members of the Council of Governors to be elected from the constituency, or class within that constituency,
- 8.1.3 the details of any nomination committee that has been established by the corporation;
- 8.1.4 the address and times at which nomination papers may be obtained;

- 8.1.5 the address for return of nomination papers and the date and time by which they must be received by the Returning Officer;
- 8.1.6 the date and time by which any notice of withdrawal must be received by the Returning Officer;
- 8.1.7 the contact details of the Returning Officer; and
- 8.1.8 the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

- 9.1 Each candidate must nominate themselves on a single nomination paper.
- 9.2 The Returning Officer:
 - 9.2.1 is to supply any member of the corporation with a nomination paper, and
 - 9.2.2 is to prepare a nomination paper for signature at the request of any member of the corporation;

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

10. Candidate's particulars

- 10.1 The nomination paper must state the candidate's:
 - 10.1.1 full name;
 - 10.1.2 contact address in full; and
 - 10.1.3 constituency, or class within a constituency, of which the candidate is a member; and
 - 10.1.4 previous tenure as Governor on the Trust's Council of Governors, including dates if applicable.

11. Declaration of interests

- 11.1 The nomination paper must state:
 - 11.1.1 any financial interests that the candidate has in the corporation; and
 - 11.1.2 whether the candidate is a member of a political party, and if so, which party;
- and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

- 12.1 The nomination paper must include a declaration made by the candidate:
 - 12.1.1 that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and

- 12.1.2 for a member of the public constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

- 13.1 The nomination paper must be signed and dated by the candidate, indicating that:
- 13.1.1 they wish to stand as a candidate;
 - 13.1.2 their declaration of interests as required under Rule 11, is true and correct; and
 - 13.1.3 their declaration of eligibility, as required under Rule 12, is true and correct.

14. Decisions as to the validity of nomination

- 14.1 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:
- 14.1.1 decides that the candidate is not eligible to stand;
 - 14.1.2 decides that the nomination paper is invalid;
 - 14.1.3 receives satisfactory proof that the candidate has died; or
 - 14.1.4 receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The Returning Officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:
- 14.2.1 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;
 - 14.2.2 that the paper does not contain the candidate's particulars, as required by Rule 10;
 - 14.2.3 that the paper does not contain a declaration of the interests of the candidate, as required by Rule 11
 - 14.2.4 that the paper does not include a declaration of eligibility as required by Rule 12; or
 - 14.2.5 that the paper is not signed and dated by the candidate, as required by Rule 13.
- 14.3 The Returning Officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the Returning Officer decides that a nomination is invalid, the Returning Officer must endorse this on the nomination paper, stating the reasons for their decision.
- 14.5 The Returning Officer is to send notice of the decision as to whether a

nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates

15.1 The Returning Officer is to prepare and publish a statement showing the candidates who are standing for election.

15.2 The statement must show:

15.2.1 the name, contact address, and constituency or class within a constituency of each candidate standing; and

15.2.2 the declared interests of each candidate standing as given in their nomination paper; and

15.2.3 any previous tenure as Governor on the Trust's Council of Governors, including dates if applicable.

15.3 The statement must list the candidates standing for election in alphabetic order by surname.

15.4 The Returning Officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

16.1 The corporation is to make the statement 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.

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

18.3.1 the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these Rules; and

18.3.2 the Returning Officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or in consultation with the corporation.

Part 5 Contested elections

19. Poll to be taken by ballot

19.1 The votes at the poll must be given by secret ballot.

19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these Rules.

20. The ballot paper

20.1 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.

20.2 Every ballot paper must specify:

20.2.1 the name of the corporation,

20.2.2 the constituency, or class within a constituency, for which the election is being held,

20.2.3 the number of members of the Council of Governors to be elected from that constituency, or class within that constituency;

20.2.4 the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;

20.2.5 instructions on how to vote;

20.2.6 if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll; and

20.2.7 the contact details of the Returning Officer.

20.3 Each ballot paper must have a unique identifier.

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

21. The declaration of identity (public constituency)

21.1 In respect of an election for a public constituency a declaration of identity must be issued with each ballot paper.

- 21.2 The declaration of identity is to include a declaration:
- 21.2.1 that the voter is the person to whom the ballot paper was addressed;
 - 21.2.2 that the voter has not marked or returned any other voting paper in the election; and
 - 21.2.3 for a member of the public constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- 21.3 The declaration of identity is to include space for:
- 21.3.1 the name of the voter;
 - 21.3.2 the address of the voter;
 - 21.3.3 the voter's signature; and
 - 21.3.4 the date that the declaration was made by the voter.
- 21.4 The voter must be required to return the declaration of identity together with the ballot paper.
- 21.5 The declaration of identity must caution the voter, 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

- 22.1 The corporation is to provide the Returning Officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of Rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll

- 23.1 The Returning Officer is to publish a notice of the poll stating:
- 23.1.1 the name of the corporation;
 - 23.1.2 the constituency, or class within a constituency, for which the election is being held;
 - 23.1.3 the number of members of the Council of Governors to be elected from that constituency, or class with that constituency;
 - 23.1.4 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;
 - 23.1.5 that the ballot papers, for the election are to be issued and returned, if appropriate, by post;

- 23.1.6 the address for return of the ballot papers and the date and time of the close of the poll;
- 23.1.7 the address and final dates for applications for replacement ballot papers; and
- 23.1.8 the contact details of the Returning Officer.

24. Issue of voting documents by Returning Officer

- 24.1 As soon as is reasonably practicable on or after the publication of the notice of the poll, the Returning Officer is to send the following documents to each member of the corporation named in the list of eligible voters:
 - 24.1.1 a ballot paper and ballot paper envelope;
 - 24.1.2 a declaration of identity (if required);
 - 24.1.3 information about each candidate standing for election, pursuant to Rule 52 of these Rules; and
 - 24.1.4 a covering envelope.
- 24.2 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

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
 - 25.2.1 the address for return of the ballot paper printed on it; and
 - 25.2.2 pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the Returning Officer:
 - 25.3.1 the completed declaration of identity if required; and
 - 25.3.2 the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

- 27.1 The Returning Officer is to put in place arrangements to enable requests for assistance to vote to be made.

27.2 Where the Returning Officer receives a request from a voter who requires assistance to vote, the Returning Officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

28. Spoilt ballot papers

28.1 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 as a “spoilt ballot paper”), that voter may apply to the Returning Officer for a replacement ballot paper.

28.2 On receiving an application, the Returning Officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

28.3 The Returning Officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

28.3.1 is satisfied as to the voter’s identity; and

28.3.2 has ensured that the declaration of identity, if required, has not been returned.

28.4 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”):

28.4.1 the name of the voter; and

28.4.2 the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and

28.4.3 the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers

29.1 Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the Returning Officer for a replacement ballot paper.

29.2 The Returning Officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:

29.2.1 is satisfied as to the voter’s identity;

29.2.2 has no reason to doubt that the voter did not receive the original ballot paper; and

29.2.3 has ensured that the declaration of identity if required has not been returned.

29.3 After issuing a replacement ballot paper for a lost ballot paper, the Returning Officer shall enter in a list (“the list of lost ballot papers”):

29.3.1 the name of the voter: and

29.3.2 the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

- 30.1 If a person applies for a replacement ballot paper under Rule 28 or 29 and a declaration of identity has already been received by the Returning Officer in the name of that voter, the Returning Officer may not issue a replacement ballot paper unless, in addition to the requirements imposed by Rule 28.3 or 29.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the Returning Officer in the name of that voter.
- 30.2 After issuing a replacement ballot paper under this Rule, the Returning Officer shall enter in a list (“the list of tendered ballot papers”):
- 30.2.1 the name of the voter; and
 - 30.2.2 the details of the unique identifier of the replacement ballot paper issued under this Rule.

31. Declaration of identity for replacement ballot papers (public constituency)

- 31.1 In respect of an election for a public constituency a declaration of identity must be issued with each replacement ballot paper.
- 31.2 The declaration of identity is to include a declaration:
- 31.2.1 that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
 - 31.2.2 of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- 31.3 The declaration of identity is to include space for:
- 31.3.1 the name of the voter;
 - 31.3.2 the address of the voter;
 - 31.3.3 the voter’s signature; and
 - 31.3.4 the date that the declaration was made by the voter.
- 31.4 The voter must be required to return the declaration of identity together with the ballot paper.
- 31.5 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**

- 32.1 Where the Returning Officer receives a:

- 32.1.1 covering envelope; or
- 32.1.2 any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper

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

- 32.2 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:

- 32.2.1 the candidate for whom a voter has voted; or
- 32.2.2 the unique identifier on a ballot paper.

- 32.3 The Returning Officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper

- 33.1 A ballot paper shall not be taken to be duly returned unless the Returning Officer is satisfied that it has been received by the Returning Officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed and dated.

- 33.2 Where the Returning Officer is satisfied that Rule 33.1 has been fulfilled, he or she is to:

- 33.2.1 put the declaration of identity if required in a separate packet; and put the ballot paper aside for counting after the close of the poll.

- 33.3 Where the Returning Officer is not satisfied that Rule 33.1 has been fulfilled, he or she is to:

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

34. Declaration of identity but no ballot paper (public constituency)

- 34.1 Where the Returning Officer receives a declaration of identity if required but no ballot paper, the Returning Officer is to:

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

35. Sealing of packets

35.1 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:

- 35.1.1 the disqualified documents, together with the list of disqualified documents inside it;
- 35.1.2 the declarations of identity if required;
- 35.1.3 the list of spoilt ballot papers;
- 35.1.4 the list of lost ballot papers;
- 35.1.5 the list of eligible voters; and
- 35.1.6 the list of tendered ballot papers.

Part 6 Counting the Votes**36. Arrangements for counting of the votes**

36.1 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

37.1 The Returning Officer is to:

- 37.1.1 count and record the number of ballot papers that have been returned; and
- 37.1.2 count the votes accordingly to the provisions in this Part of the rules.

37.2 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.

38. Rejected ballot papers

38.1 Any ballot paper:

- 38.1.1 which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced;
 - 38.1.2 on which votes are given for more candidates than the voter is entitled to vote;
 - 38.1.3 on which anything is written or marked by which the voter can be identified except the unique identifier; or
 - 38.1.4 which is unmarked or rejected because of uncertainty;
- shall, subject to Rules 38.2 and 38.3, be rejected and not counted.

38.2 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.

38.3 A ballot paper on which a vote is marked:

- 38.3.1 elsewhere than in the proper place;
- 38.3.2 otherwise than by means of a clear mark;
- 38.3.3 by more than one mark;

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

38.4 The Returning Officer is to:

- 38.4.1 endorse the word “rejected” on any ballot paper which under this rule is not to be counted; and
- 38.4.2 in the case of a ballot paper on which any vote is counted under Rules 38.2 or 38.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

38.5 The Returning Officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- 38.5.1 does not bear features that have been incorporated into the ballot paper;
- 38.5.2 voting for more candidates than the voter is entitled to;
- 38.5.3 writing or mark by which voter could be identified; and
- 38.5.4 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

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

Part 7 Final proceedings in contested and uncontested elections

40. Declaration of result for contested elections

40.1 In a contested election, when the result of the poll has been ascertained, the Returning Officer is to:

- 40.1.1 declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected;

- 40.1.2 give notice of the name of each candidate who he or she has declared elected:
 - 40.1.2.1 where the election is held under a proposed Constitution pursuant to powers conferred on the Mid Staffordshire NHS Foundation Trust by Section 33(4) of the 2006 Act, to the Chair of the Trust; or
 - 40.1.2.2 in any other case, to the Chair of the corporation; and
- 40.1.3 give public notice of the name of each candidate whom he or she has declared elected.
- 40.2 The Returning Officer is to make available on request:
 - 40.2.1 the total number of votes given for each candidate (whether elected or not); and
 - 40.2.2 the number of rejected ballot papers under each of the headings in Rule 38.5

41. Declaration of result for uncontested elections

- 41.1 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:
 - 41.1.1 declare the candidate or candidates remaining validly nominated to be elected;
 - 41.1.2 give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation; and
 - 41.1.3 give public notice of the name of each candidate who he or she has declared elected.

Part 8 Disposal of documents

42. Sealing up of documents relating to the poll

- 42.1 On completion of the counting at a contested election, the Returning Officer is to seal up the following documents in separate packets:
 - 42.1.1 the counted ballot papers;
 - 42.1.2 the ballot papers endorsed with "rejected in part";
 - 42.1.3 the rejected ballot papers; and
 - 42.1.4 the statement of rejected ballot papers.
- 42.2 The Returning Officer must not open the sealed packets of:
 - 42.2.1 the disqualified documents, with the list of disqualified documents inside it;
 - 42.2.2 the declarations of identity;
 - 42.2.3 the list of spoilt ballot papers;

- 42.2.4 the list of lost ballot papers;
- 42.2.5 the list of eligible voters; and
- 42.2.6 the list of tendered ballot papers.

42.3 The Returning Officer must endorse on each packet a description of:

- 42.3.1 its contents;
- 42.3.2 the date of the publication of notice of the election;
- 42.3.3 the name of the corporation to which the election relates; and
- 42.3.4 the constituency, or class within a constituency, to which the election relates.

43. Delivery of documents

43.1 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 Chair of the corporation.

44. Forwarding of documents received after close of the poll

44.1 Where:

- 44.1.1 any voting documents are received by the Returning Officer after the close of the poll; or
- 44.1.2 any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
- 44.1.3 any applications for replacement ballot papers are made too late to enable new ballot papers to be issued;

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

45. Retention and public inspection of documents

45.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the Returning Officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

45.2 With the exception of the documents listed in Rule 45.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

46.1 The corporation may not allow the inspection of, or the opening of any sealed packet containing:

- any rejected ballot papers, including ballot papers rejected in part
- any disqualified documents, or the list of disqualified documents;
- any counted ballot papers;
- any declarations of identity; or
- the list of eligible voters;

by any person without the consent of the Regulator.

- 46.2 A person may apply to the Regulator to inspect any of the documents referred in Rule 45.1, and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 46.3 The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
- persons;
 - time;
 - place and mode of inspection;
 - production or opening
- and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- 46.4 On an application to inspect any of the documents listed in Rule 46.1:
- in giving its consent, the Regulator; and
 - in making the documents available for inspection, the corporation must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established
 - that his or her vote was given; and
 - that the Regulator 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

- 47.1 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:
- 47.1.1 countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned with that constituency or class, and
- 47.1.2 order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with Rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- 47.2 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 but further candidates shall be invited for that constituency or class.
- 47.3 Where a poll is abandoned under Rule 47.1.1, Rules 47.4 to 47.7 are to apply.

- 47.4 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.
- 47.5 The Returning Officer is to:
- 47.5.1 count and record the number of ballot papers that have been received, and
 - 47.5.2 seal up the ballot papers into packets, along with the records of the number of ballot papers.
- 47.6 The Returning Officer is to endorse on each packet a description of:
- 47.6.1 its contents;
 - 47.6.2 the date of the publication of notice of the election;
 - 47.6.3 the name of the corporation to which the election relates; and
 - 47.6.4 the constituency, or class within a constituency, to which the election relates.
- 47.7 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 corporation, and Rules 45 and 46 are to apply.

Part 10 Election expenses and publicity

48. Election expenses

- 48.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the Regulator under Part 11 of these Rules.

49. Expenses and payments by candidates

- 49.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- 49.1.1 personal expenses;
 - 49.1.2 travelling expenses, and expenses incurred while living away from home; and
 - 49.1.3 expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

50. Election expenses incurred by other persons

- 50.1 No person may:
- 50.1.1 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

50.1.2 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.

50.2 Nothing in this Rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to Rules 51 and 52.

51. Publicity

Publicity about election by the corporation

51.1 The corporation may:

51.1.1 compile and distribute such information about the candidates; and

51.1.2 organise and hold such meetings to enable the candidates to speak and respond to questions; as it considers necessary.

51.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under Rule 52, must be:

51.2.1 objective, balanced and fair;

51.2.2 equivalent in size and content for all candidates;

51.2.3 compiled and distributed in consultation with all of the candidates standing for election; and

51.2.4 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.

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

52. Information about candidates for inclusion with voting documents

52.1 The corporation must compile information about the candidates standing for election, to be distributed by the Returning Officer pursuant to Rule 24 of these Rules.

52.2 The information must consist of a statement submitted by the candidate of no more than 150 words.

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

53.1 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.

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

Part 11 Questioning elections and the consequence of irregularities

54. Application to question an election

- 54.1 An application alleging a breach of these Rules, including an electoral irregularity under Part 10, may be made to the Regulator.

- 54.2 An application may only be made once the outcome of the election has been declared by the Returning Officer.

- 54.3 An application may only be made to the Regulator by:

54.3.1 a person who voted at the election or who claimed to have had the right to vote; or

54.3.2 a candidate, or a person claiming to have had a right to be elected at the election.

- 54.4 The applicant must:

54.4.1 describe the alleged breach of the rules or electoral irregularity; and

54.4.2 be in such a form as the Regulator may require.

- 54.5 The application must be presented in writing within 21 days of the declaration of the result of the election.

- 54.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable:

54.6.1 the Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator;

54.6.2 the determination by the person or persons nominated in accordance with Rule 54.6.1 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

54.6.3 the Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 Miscellaneous

55. Secrecy

55.1 The following persons:

55.1.1 the Returning Officer;

55.1.2 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:

55.1.2.1 the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted;

55.1.2.2 the unique identifier on any ballot paper;

55.1.2.3 the candidate(s) for whom any member has voted.

55.2 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.

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

56. Prohibition of disclosure of vote

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

57. Disqualification

57.1 A person may not be appointed as a Returning Officer, or as staff of the Returning Officer pursuant to these Rules, if that person is:

57.1.1 a member of the corporation;

57.1.2 an employee of the corporation;

57.1.3 a director of the corporation; or

57.1.4 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

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

58.1.1 the delivery of the documents in Rule 24; or

58.1.2 the return of the ballot papers and declaration of identity;

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

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

CONTENTS

1. INTERPRETATION

2. INTRODUCTION

3 STANDING ORDERS FOR COUNCIL OF GOVERNORS MEETINGS

- Calling of meetings
- Admission to the Public
- Notice of Meetings
- Setting the Agenda
- Chair of the Meeting
- Annual Members Meeting
- Motion
- Chairman's Ruling
- Voting
- Attendance
- Minutes
- Record of Attendance
- Suspension of Standing Orders
- Variation and Amendment of Standing Orders
- Quorum
- Disputes
- Validity of Procedures

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5 CONFIDENTIALITY

6 COMPLIANCE – OTHER MATTERS

APPENDIX 1 – COUNCIL OF GOVERNORS CODE OF CONDUCT AND THE NOLAN PRINCIPLES

APPENDIX 2 – NOLAN PRINCIPLES

APPENDIX 3 – DECLARATIONS OF INTEREST AND REGISTER OF INTERESTS

APPENDIX 4 – COUNCIL OF GOVERNORS – ROLES AND RESPONSIBILITIES

STANDING ORDERS FOR MEETINGS OF THE COUNCIL OF GOVERNORS

1. INTERPRETATION

- 1.1 Save as permitted by law, and subject to the Constitution, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive or Secretary).
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 or in a Regulation or Order made under that Act shall have the same meaning in this interpretation.

2. INTRODUCTION

- 2.1 The Council of Governors shall be constituted in accordance with the requirements of the Constitution.
- 2.2 Provisions concerning nomination and election to the Council of Governors are set out in the Constitution and Election Rules. A Member may not be nominated as a Member for election to the Council of Governors unless they are eligible under the terms of the Constitution.
- 2.3 The function of the Council of Governors is to exercise the rights set out in the Constitution and the powers delegated from time to time by the Board of Directors and to act in accordance with these procedures. The Council of Governors' roles and responsibilities are set out in Appendix 4.
- 2.4 Governors shall comply with the Code of Conduct set out at Appendix 1.
- 2.5 A Member of the Trust shall be disqualified from taking up office as a Governor, or if in office shall vacate the office, in the circumstances set out in paragraph 9 of the Constitution.
- 2.6 In accordance with the Constitution the Trust Chair will Chair the Council of Governors.
- 2.7 Governors must comply with the Standing Orders for the Council of Governors including those concerning agenda, quorum, voting and the taking of minutes at the Council of Governors meetings.
- 2.8 Governors must comply with the procedure for the declaration of interests and register of interests set out at Appendix 3.
- 2.9 Governors shall not be remunerated, but may receive travelling and other expenses at rates determined by the Trust.
- 2.10 There shall be a Secretary to the Council of Governors who shall have the functions set out in the Constitution.

3. STANDING ORDERS FOR COUNCIL OF GOVERNORS MEETINGS

3.1 Calling of meetings

- 3.1.1 The Council of Governors is to meet at least three times in each

financial year (excluding the Annual Members' Meeting) at such times and places as the Council of Governors may determine.

- 3.1.2 Notwithstanding the above meetings of the Council of Governors may be called by the Secretary, or Chair, or by 10 Governors at any time including not less than 6 Public Governors who must give written notice to the Secretary specifying the business to be carried out.

3.2 Admission of the Public

- 3.2.1 All meetings of the Council of Governors are to be meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial or personal confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

3.3 Notice of Meetings

- 3.3.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary will give at least 14 days written notice of the date and time of every meeting of the Council of Governors, specifying the provisional business proposed to be transacted at it, to all Governors.
- 3.3.2 After the receipt of a request to call a meeting the Secretary shall send written notice to all Governors, specifying the business to be carried out, as soon as possible after receipt of such a request. The meeting will be held not less than 14 days but not more than 28 days following such a request. If the Secretary fails to call such a meeting to be held within 28 days then the Chair or ten Governors, whichever is the case, shall call such a meeting in accordance with the requirements in paragraph 3.3.1.
- 3.3.3 The Notice of the meeting shall be delivered to every Governor. Delivery can be by email or by post to the usual place of residence of such Governor.
- 3.3.4 Lack of service of the Notice on any Governor shall not affect the validity of a meeting subject to the provisions of paragraph 3.3.6 below.
- 3.3.5 In the case of a meeting called by the Chair or Governors in default of the Secretary, the Chair or those Governors shall sign the Notice and no business shall be transacted at the meeting other than that specified in the Notice.
- 3.3.6 Save in the case of emergencies or the need to conduct urgent business failure to serve such a Notice on more than 18 Governors will invalidate the meeting.

3.4 Setting the Agenda

- 3.4.1 The Trust may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 3.4.2 In accordance with the Constitution every agenda for meetings of the Council of Governors will draw to the attention of elected Governors, the declaration Governors are required to make stating that they are qualified to vote as a Member of the Trust and that they are not prevented from being a Member of the Council of Governors. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the meeting of the Council of Governors.
- 3.4.3 Any Governor wishing to submit an agenda item must notify the Secretary in writing at least 10 days prior to the meeting at which it is to be considered. Requests made less than 10 days before a meeting may be included for consideration at the meeting at the discretion of the Chair.

3.5 Chair of the Meeting

- 3.5.1 At any meeting of the Council of Governors the Chair, if present, shall preside subject to paragraphs 3.5.2 and 3.5.3. If the Chair is absent from the meeting the Deputy Chair shall preside. Otherwise, another Non Executive Director shall preside.
- 3.5.2 If the Chair or other person presiding has a conflict of interest in relation to the business being discussed, the Vice Chair of the Council of Governors will chair that part of the meeting and have the casting vote.
- 3.5.3 If the Council of Governors is meeting to appoint or remove the Chair or Non Executive Directors or decide the remuneration and allowances of the Chair or Non Executive Directors, neither the Chair nor any other Non-Executive Director shall preside over the meeting. In this instance the Vice Chair of the Council of Governors will chair the meeting and have the casting vote.

3.6 Questions from Governors

- 3.6.1 Any Governor wishing to submit a question must notify the Secretary in writing at least 10 days prior to the meeting at which it is to be asked. Questions received less than 10 days before a meeting may be asked at the meeting at the discretion of the Chair.
- 3.6.2 There will be a maximum of 8 questions allowed at each meeting of the Council of Governors and will be answered in order of receipt.
- 3.6.3 There will be no debate on any of the questions, unless at the discretion of the Chair.

- 3.6.4 The questions will be answered at the meeting. However if this is not possible a written answer will be given to Governors as soon as practical after the meeting.

3.7 Motion

- 3.7.1 Motions may only be submitted by a Governor and must be received by the Secretary in the writing at least 10 days prior to the meeting at which they are to be considered.
- 3.7.2 Emergency motions may only be submitted by a Governor and must be received by the Secretary before the commencement of the meeting. The acceptance of such motions may be included for consideration at the meeting at the discretion of the Chair.
- 3.7.3 Any other business shall be notified to the Chair at the commencement of the meeting. Acceptance of such items of business may be included for consideration at the meeting at the discretion of the Chair.
- 3.7.4 Notice of a motion to rescind a previous minute must be received by the Secretary at least 21 days before the meeting and must be signed by a simple majority of Governors.
- 3.7.5 Notice of a motion to amend but not directly negate a resolution must be received by the Secretary at least 21 days before the meeting. No further amendments may be moved at the meeting at which the motion is being considered until the first amendment is disposed of. If the amendment is passed it shall become part of the substantive motion and subject to further amendment.
- 3.7.6 A mover of a motion should have a maximum of five minutes to move and three minutes to reply. Once a motion has been moved no Governor shall speak more than once or for more than three minutes.

3.8 Chairman's Ruling

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

3.9 Voting

- 3.9.1 A Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting they have made a declaration in the form specified by the Council of Governors of particulars of their qualification to vote as a Governor of the Trust, and that they are not prevented from being a member of the Council of Governors. A Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and

every agenda for meetings with the Council of Governors will draw this to the attention of Governors.

- 3.9.2 Subject to the Constitution questions arising at a meeting shall be determined by the simple majority of those present and voting on the question and, in the case of there not being a simple majority, the person presiding shall have a second or casting vote.
- 3.9.3 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a simple majority of the Governors present so request.
- 3.9.4 In accordance with the Constitution the appointment of the Chair and any Non Executive Director of the Trust is subject to the approval of a simple majority of the members of the Council of Governors present and voting at a meeting.
- 3.9.5 In accordance with the Constitution the removal of the Chair and any Non-Executive Director of the Trust is subject to a three quarters majority of all members of the Council of Governors.
- 3.9.6 In accordance with the Constitution the appointment of the Chief Executive is subject to the approval of a simple majority of the members of the Council of Governors present and voting at a meeting.
- 3.9.7 In no circumstances may any absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.9.8 No resolution at the Council of Governors shall be passed if all the Public Governors present unanimously oppose it.
- 3.9.9 Governors upon request at the meeting can have their vote recorded in the minutes.

3.10 Attendance

- 3.10.1 Governors who are unable to attend the Council of Governors meeting should advise the Secretary in advance of the meeting so that their apologies may be submitted.
- 3.10.2 The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 3.10.3 The Council of Governors may invite the Chief Executive or any other member(s) of the Board of Directors or a representative of the Trust's Auditors or other advisors to attend and speak at a meeting of the Council of Governors.
- 3.10.4 The Council of Governors can require one or more Directors of the

Board to attend a meeting of the Council of Governors regarding the performance of a Director of the Board or of the Trust.

3.11 Minutes

- 3.11.1 The minutes of the proceedings of a meeting should be drawn up and submitted for agreement at the next ensuing meeting. The person presiding at it will sign them.
- 3.11.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.11.3 Minutes shall be circulated in advance of the meeting at which their approval is being considered. Where providing a record of a public meeting the minutes should be made available to the public.

3.12 Record of Attendance

- 3.12.1 The names of the Governors present at the meeting shall be recorded in the minutes.

3.13. Suspension of Standing Orders

- 3.13.1 Except where this would contravene any Statutory provision or any Direction made by the Secretary of State, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two thirds of the Council of Governors are present, and that a majority of those present vote in favour of suspension.
- 3.13.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Council of Governors and Board of Directors.
- 3.13.4 No formal business may be transacted whilst Standing Orders are suspended.

3.14 Variation and Amendment of Standing Orders

- 3.14.1 These Standing Orders may only be amended if such amendments have been approved by a simple majority of the Board of Directors and a simple majority of the Council of Governors and by Monitor in accordance with the paragraph 4 of this Constitution.

3.15 Quorum

- 3.15.1 9 Governors including not less than 5 public Governors, 2 staff Governors and 2 appointed Governors shall form a quorum.

- 3.15.2 Any Governor who has been disqualified from participating in the decision on any matter and/or from voting on any resolution by reason of the declaration of an interest shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.15.3 In accordance with the Constitution if at any meeting there is no quorum within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned and arranged at a future suitable date in accordance with the provisions in paragraph 3.3 of the Constitution.

4. Arrangements for the exercise of functions by delegation

- 4.1 **Emergency Powers** - The powers which the Council of Governors has retained to itself within these Standing Orders may in an emergency be exercised after having consulted at least five elected Governors. The exercise of such powers by the Governors shall be reported to the next formal meeting of the Council of Governors for ratification.
- 4.2 **Delegation to a Governor** – The Council of Governors may delegate duties to an individual Governor but only under a clear remit approved by the Council of Governors.
- 4.3 The Nomination and Remuneration Committee or other such Committee with that remit of the Council of Governors shall exercise the functions set out in its Terms of Reference on behalf of the Council of Governors.

5. Committees

- 5.1 **Appointment of Committees** – the Council of Governors may and, if directed shall appoint committees of the Council, consisting of Governors.
- 5.2 A committee appointed under SO 5.1 may appoint sub-committees consisting of members of the committee.
- 5.3 The Standing Orders of the Council of Governors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Council.
- 5.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council), as the Council shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Council.

- 5.6 The Council shall approve the appointments to each of the Committees which it has formally constituted.
- 5.7 **Confidentiality** – A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council or shall otherwise have concluded on that matter.
- 5.8 A Governor of the Trust or a member of a committee shall not disclose any matter reported to the Council or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council or committee shall resolve that it is confidential.

6. Compliance - Other Matters

- 6.1 All Governors of the Trust shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 6.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors.

APPENDIX 1

COUNCIL OF GOVERNORS CODE OF CONDUCT

1. Introduction

- 1.1 This Code seeks to outline appropriate conduct for Governors and addresses both the requirements of Office and their personal behaviour.
- 1.2 The Code expands and complements the Constitution.
- 1.3 Members of the Trust seeking election to the Council of Governors will be required to sign a Declaration to confirm that they will comply with this Code in all respects and that they support the Trust's objectives.

2. Qualifications for Office

Governors must continue to comply with the Qualifications required to hold office, throughout their period of tenure, as defined in the Constitution. The Secretary should be advised of any changes in circumstances that may disqualify a Governor from continuing in office. An example of this would be a Public Governor becoming an employee of the Trust or a Staff Governor leaving the employment of the Trust.

3. Roles and Functions

Governors should:

- 3.1 Adhere to the Trust's rules and policies and support its objectives, in particular those of retaining Foundation status and developing a successful Trust.
- 3.2 Act in the best interests of the Trust at all times.
- 3.3 Contribute to the workings of the Council of Governors in order for it to fulfil its role and function.
- 3.4 Recognise that their role is a collective one. Governors exercise collective decision making.
- 3.5 Note that the functions allocated to Governors are not of a managerial nature.
- 3.6 Abide by the "Nolan Principles" Appendix 2.

4. Confidentiality

All Governors are required to respect the confidentiality of the information they are made privy to as a result of their Membership of the Council of Governors.

5. Conflict of Interests

- 5.1 Governors should act with utmost integrity and objectivity and in the best interests of the Trust in performing their duties. They should not use their

position for personal advantage or seek to gain preferential treatment. Any Governor who has a relevant and material interest in a matter, should declare such interest to the Council of Governors and act in accordance with the procedures set out in Appendix 3. If in any doubt advice should be sought from the Secretary.

- 5.2 Any Council Member who fails to disclose any interest required to be disclosed must permanently vacate their office if required to do so by a simple majority of the remaining Governors meeting as the Council of Governors.

6. Council of Governors Meetings

- 6.1 Governors have a responsibility to attend meetings of the Council of Governors. When this is not possible they should submit an apology to the Secretary in advance of the meeting.

- 6.2 In accordance with the Constitution, absence from the Council of Governor meetings without good reason as established to the satisfaction of the Council of Governors is grounds for disqualification. If a Governor fails to attend three consecutive meetings of the Council of Governors or a Committee to which a Governor is appointed in any 12 month period his tenure of office is to be immediately terminated unless the Governors are satisfied that the absence was due to a reasonable cause and he will be able to start attending meetings again within such a period as they consider reasonable.

- 6.3 Governors are expected to attend for the duration of the meeting.

7. Personal Conduct

- 7.1 Governors are required to adhere to the highest standards of conduct in the performance of their duties. In respect of their interaction with others, they are required to:

- 7.1.1 Adhere to good practice in respect of the conduct of meetings and respect the views of other Governors.
- 7.1.2 Be mindful of conduct which could be deemed to be unfair or discriminatory.
- 7.1.3 Treat the Board of Directors and other employees with respect and in accordance with the Trust's policies.
- 7.1.4 Recognise that the Governors and the Directors have a common purpose i.e. the success of the Trust, and adopt a team approach.
- 7.1.5 Conduct themselves in such a manner as to reflect positively on the Trust. When attending external meetings or any other events at which they are present it is important for Governors to be ambassadors for the Trust.

8. Accountability

Governors are accountable to the membership and should demonstrate this by attending Members' meetings and other key events, which provide opportunities to interface with the membership.

9. Training and Development

9.1 Training is essential for Governors, in respect of the effective performance of their role. Governors are required to adhere to the Trust's policies.

9.2 If a Governor refuses to undertake training which the Council of Governors requires all Governors to undertake, he may be removed by resolution passed by a simple majority of the remaining Governors.

10. Non Compliance with the Code of Conduct

10.1 Non compliance with the Code may result in action being taken as follows:

10.1.1 Where non compliance takes place, the Chair shall be authorised to take such action as may be immediately required, including the exclusion of the person concerned from a meeting.

10.1.2 Where such misconduct is alleged, it shall be open to the Council of Governors to decide, by a simple majority of those present, to lay a formal charge of non compliance.

10.1.3 Notification to the Governor in writing of the charge/s, detailing the specific behaviour, which is considered to be non compliant with the Code of Conduct, and inviting and considering their response within a defined timescale.

10.1.4 Inviting the Governor to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.

10.2 If a Governor is considered to have acted in a manner inconsistent with the Code of Conduct the Governor may be removed from the Council of Governors by resolution approved by not less than two thirds of the remaining Governors present and casting a vote at a General Meeting of the Council of Governors.

10.3 This Code of Conduct does not limit or invalidate the right of the Governor or the Trust to act under the Constitution.

DECLARATION:

I (Print name) agree to abide by the Code of Conduct for Governors of Mid Staffordshire NHS Foundation Trust.

Signature:

Date:

APPENDIX 2

NOLAN PRINCIPLES

The seven principles of public life:

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

APPENDIX 3

DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

Declaration of Interests

1. In accordance with the Constitution and the National Health Service Act 2006 the Trust is required to maintain a Register of Interests of Governors. Governors must declare any relevant and material interest whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council of Governors on appointment and on any subsequent occasion that an interest arises. Governors must disclose any relevant and material interest as soon as they are aware of it.
2. Interests, which should be regarded as “relevant and material” include the following held by a Governor:
 - 2.1 Directorships, including Non Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies)
 - 2.2 Ownership, part ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - 2.3 Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
 - 2.4 Position of authority in a charity or voluntary organisation in the field of health or social care.
 - 2.5 Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
 - 2.6 Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
3. The Trust will interpret the phrase “relevant and material” in accordance with guidance issued from time to time by Monitor.
4. If Governors have any doubt about the relevance of an interest, this should be discussed with the Chair or Secretary.
5. The exceptions, which shall not be treated as material interests are as follows:
 - 5.1 Shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange.
 - 5.2 A Contract of Employment with the Trust held by a Staff Governor.
 - 5.3 A Contract of Employment with Stafford and Surrounds Clinical Commissioning Group or Cannock Chase Clinical Commissioning Group held by a Clinical Commissioning Group Governor.

- 5.4 A Contract of Employment held with a Local Authority held by a Local Authority Governor.
- 5.5 A Contract of Employment with a Partnership Organisation held by a Partnership Governor.

Register of Interests

- 6. The Secretary will ensure that a Register of Interests is maintained to record declarations of interests of Governors.
- 7. The Register will be available for inspection by Members of the Public free of charge.

Disclosure

- 8. Any Governor who has any relevant and material interest as defined above shall declare such interest(s) to the Council of Governors and:
 - 8.1 not be present except with the permission of the Council of Governors in any discussion with relevance to the interest.
 - 8.2 not vote on the issue (and if by inadvertency do remain and vote, their vote shall not be counted).
- 9. If an interest is declared during a meeting of the Council of Governors the interest shall be recorded in the minutes. Any change in interests between meetings of the Council of Governors shall be officially declared at the next Governors meeting.

APPENDIX 4

COUNCIL OF GOVERNORS – ROLES AND RESPONSIBILITIES

The roles and responsibilities of the Council of Governors shall include:

1. To represent the interests of the Members of the Trust as a whole, Partnership Organisations and the public.
2. To feedback information about the Trust to the Members of the Trust, Partnership Organisations and the public.
3. To hold the Non Executive Directors individually and collectively to account for the performance of the Board of Directors.
4. To appoint, and if ever appropriate, dismiss the Chair and Non-Executive Directors.
5. To decide the remuneration and allowances, and other terms and conditions of office, of the Non-Executive Directors.
6. To approve the appointment of the Chief Executive.
7. To approve the appointment of the Secretary.
8. To appoint or remove the external financial auditors.
9. To approve an application to Monitor for a proposed merger, acquisition, separation or dissolution of all or part of the Trust or acquisitions by the Trust.
10. To approve significant transactions and to provide their views on material transactions.
11. To be presented with and consider the Annual Accounts, any Auditors Report on them and Annual Report.
12. To provide their views to the Board of Directors on the Trust's forward planning.
13. To use their best endeavours to ensure the Trust implements its agreed strategy.
14. To ensure the Council of Governors meetings are held in accordance with the Standing Orders.
15. To comply with and implement the Code of Conduct for the Council of Governors.
16. To be consulted on and make recommendations to the Board of Directors on the development of the Membership Strategy.
17. To respond as appropriate when consulted by the Board of Directors.
18. To undertake such functions as the Board of Directors from time to time shall

- request.
19. To undertake oversight and scrutiny over Trust activities generating non-NHS income.

The Governors will also:

20. Receive regular information, for example: Newsletters
21. In conjunction with the Chair set up Committees or other groups to consider matters such as the Membership Strategy.
22. Attend regular Council of Governors meetings.
23. Attend the Annual Members Meeting.
24. Attend special events, for example: Open Days.
25. Be equipped in the capacity as such by the Trust taking steps to secure that they have the skills and knowledge that they require.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

1. INTERPRETATION

2. INTRODUCTION

Statutory Framework
NHS Framework
Delegation of Powers

3. THE TRUST

Composition of the Trust
Appointment of the Chair and Directors
Terms of Office of the Chair and Directors
Appointment of Deputy-Chair
Powers of Deputy-Chair

4. MEETINGS OF THE TRUST

Calling Meetings
Notice of Meetings
Setting the Agenda
Chair of Meeting
Annual Public Meeting
Notices of Motion
Withdrawal of Motion or Amendments
Motion to Rescind a Resolution
Motions
Chair's Ruling
Voting
Minutes
Suspension of Standing Orders
Variation and Amendment of Standing Orders
Record of Attendance
Quorum

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

Emergency Powers
Delegation to Sub-Committee
Delegation of Officers

6. COMMITTEES

Appointment of Committees
Confidentiality

7. DECLARATIONS OF INTEREST AND REGISTER OF INTEREST

Declaration of Interest
Register of Interest

8. **DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**
9. **COMPLIANCE – OTHER MATTERS**
10. **BOARD PERFORMANCE**
11. **DISPOSALS**
12. **CUSTODY OF SEAL AND SEALING OF DOCUMENTS**
 - Custody of Seal
 - Sealing of Documents
 - Register of Sealing
13. **SIGNATURE OF DOCUMENTS**
14. **CHANGES TO BOARD STANDING ORDERS**
15. **MISCELLANEOUS**
 - Standing Orders to be given to Directors and Officers
 - Documents having the Standing of Standing Orders
 - Review of Standing Orders

1. INTERPRETATION

- 1.1 Save as permitted by law, and subject to the Constitution, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive or Secretary).
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 or in a Regulation or Order made under that Act shall have the same meaning in this interpretation.

2. INTRODUCTION

- 2.1 Mid Staffordshire NHS Foundation Trust (the Trust) is a public benefit corporation authorised by Monitor under the National Health Service Act 2006.
- 2.2 The Trust's principal places of business are:
 - Stafford Hospital
 - Cannock Chase Hospital
- 2.3 NHS Foundation Trusts are governed by statute, mainly the National Health Service Act 2006, by their Constitution and by the terms of their authorisation by Monitor (the Regulatory Framework).
- 2.4 The functions of the Trust are conferred by the Regulatory Framework. As a body corporate the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee of patients' property held by the Trust on behalf of patients.
- 2.5 The Constitution requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business.
- 2.6 **Delegation of Powers**
 - 2.6.1 Under the Standing Orders relating to the Arrangements for the Exercise of Functions by Delegation (SO5) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of (SO 5.3) or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as Monitor may direct. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

3. THE TRUST

- 3.1 All business shall be conducted in the name of the Trust
- 3.2 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised

as a Trust.

- 3.3 The Trust has resolved that certain powers and decisions may only be exercised or made by the Trust in formal session. These powers and decisions are set out in “Reservation of Powers to the Board and Delegation of Powers” and have effect as if incorporated into the Standing Orders.
- 3.4. The Composition of the Trust Board shall be in accordance with the Constitution. The Composition of the Trust Board shall be:
- 3.4.1 a Non Executive Chair
 - 3.4.2 4 - 6 Non Executive Directors; and
 - 3.4.3 4 - 6 Executive Directors.
 - 3.4.4 One of the Executive Directors shall be the Chief Executive.
 - 3.4.5 The Chief Executive shall be the Accounting Officer.
 - 3.4.6 One of the Executive Directors shall be the Finance Director.
 - 3.4.7 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
 - 3.4.8 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 3.5 In accordance with the Constitution the Non Executive Directors of the Trust will appoint and remove the Chief Executive as a Director of the Trust. The appointment of the Chief Executive is subject to the approval of the Council of Governors.
- 3.6 In accordance with the Constitution the Board shall appoint a committee consisting of the Chair, Chief Executive and the other Non Executive Directors to appoint or remove the Executive Directors other than the Chief Executive.
- 3.7 **Terms of Office of the Chair and Directors.** The Chair and Non Executive Directors are to be appointed for a period of office in accordance with the Constitution.
- 3.8 The Remuneration and Terms of Service Committee, or other such Committee with that remit of Non Executive Directors shall decide the terms and conditions of office including remuneration and allowances of Executive Directors. All the Non Executive Directors including the Chair shall be members of the Remuneration and Terms of Service Committee or other such Committee with that remit.
- 3.9 **Appointment of Deputy Chair** – for the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors may appoint a Non Executive Director to be Deputy Chair for such period, not exceeding the remainder of his term as Non Executive Director for the Trust, as

they may specify on appointing him. If the Chair is unable to discharge his office as Chair of the Trust, the Deputy Chair of the Board of Directors shall be acting Chair for the Trust.

- 3.10 Any Non Executive Director so elected may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair and the Council of Governors may there upon appoint another Non Executive Director as Deputy Chair in accordance with paragraph 3.9.
- 3.11 **Powers of Deputy Chair** – Where the Chair of the Trust has died or has otherwise ceased to hold office or where he is unable to perform his duties as Chair owing to illness, absence or any other cause, reference to the Chair in these Standing Orders shall be taken to include references to the Deputy Chair.

4. MEETINGS OF THE TRUST

- 4.1 **Calling Meetings** – Ordinary meetings of the Board shall be held at such times and places as the Board may determine.
- 4.2 The Secretary may call a meeting of the Board at any time. The Chair or four Directors may request the Secretary to call a meeting giving written notice of the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after the receipt of such a request. The Secretary shall call a meeting on at least 7 but not more than 28 days notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting in accordance with the provisions in paragraph 4.3.
- 4.3 **Notice of Meetings** – Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give all Directors at least 7 days written notice of the date and place of every meeting of the Board.
- 4.4 Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every Director at least 7 days before the meeting. Delivery can be by email or by post to the usual place of residence of such Director.
- 4.5 Lack of service of the notice on any Director shall not affect the validity of a meeting subject to paragraph 4.6.
- 4.6 Failure to serve such a notice on more than 2 Directors will invalidate the meeting.
- 4.7 In the case of a meeting called by Directors or the Chair in default of the Secretary, the notice shall be signed either by those Directors or the Chair and no business shall be transacted at the meeting other than that specified in the notice.
- 4.8 Before holding a meeting a copy of the Agenda of the Board of Directors held both in public and in private will be sent to members of the Council of Governors.
- 4.9 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting of the Board.

- 4.10 A Director desiring a matter to be included on an agenda shall make his request in writing to the Secretary at least 10 days before the meeting, subject to SO 4.3. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.11 **Chair of Meeting** – At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and he is present, shall preside. If the Chair and Deputy Chair are absent such Non Executive Director as the Directors present shall choose shall preside.
- 4.12 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and the Deputy Chair are absent, or are disqualified from participating, such Non Executive Directors as the Directors present shall choose shall preside.
- 4.13 **Notices of Motion** – A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 days before the meeting to the Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 4.7
- 4.14 **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.15 **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months. However the Chair may do so if he considers it appropriate.
- 4.16 **Motions** – The mover of a motion shall have a right to reply at the close of any discussion on the motion or any amendment thereto.
- 4.17 When a motion is under discussion or immediately prior to discussion it should be open to a Director to move:
- An amendment to the motion. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
 - The adjournment of the discussion or the meeting
 - The appointment of an ad hoc committee to deal with the specific item of business
 - That the motion be now put (Such a motion may only be put by a Director who has not previously taken part in the debate and who is eligible to vote).

- 4.18 **Chair's Ruling** – Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- 4.19 **Voting** – Every question at a meeting shall be determined by a simple majority of the votes of the Directors present and voting on the question and, in the case of there not being a simple majority, the person presiding shall have a second or casting vote.
- 4.20 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a simple majority of the Directors present so request.
- 4.21 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 4.22 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.23 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.24 Any Director or Member of a Committee of the Directors may participate in a meeting of the Board or such Committee by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.
- 4.25 A resolution in writing signed by all of the Directors entitled to receive notice of a meeting of the Board shall be as valid and effectual as if it had been passed at a meeting of the Board of Directors duly convened and held and may consist of several documents in the like form each signed by one or more Directors
- 4.26 A resolution in electronic form sent to all of the Directors entitled to receive notice of a meeting of the Board by electronic communication (for the purposes of this provision "electronic communication" means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) (a) by means of an electronic communications network; or (b) by other means but while in an electronic form) to the electronic addresses notified to the Trust by each of the Directors, shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held provided that each and every Director entitled to receive a notice of a meeting of the Board responds by electronic communication to the electronic address from which the resolution in electronic form was transmitted from, confirming their acceptance of the resolution.
- 4.27 **Minutes** – The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

- 4.28 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting where they will be signed by the person presiding at it.
- 4.29 Minutes shall be circulated in advance of their being considered at a future meeting.
- 4.30 A copy of the approved minutes for meetings of the Board of Directors held both in public and in private will be made available as soon as practicable to the Council of Governors.
- 4.31 **Suspension of Standing Orders** – Except where this would contravene any statutory provision or any direction made by the Secretary of State, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non Executive Director, and that a simple majority of those present vote in favour of suspension.
- 4.32 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.33 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 4.34 No formal business may be transacted while Standing Orders are suspended.
- 4.35 These Standing Orders may only be amended if such amendments have been approved by a simple majority of the Board of Directors and a simple majority of the Council of Governors and by Monitor in accordance with the paragraph 4 'Amendment of the Constitution'
- 4.36 **Record of Attendance** – The names of the Directors present at the meeting shall be recorded in the minutes.
- 4.37 **Quorum** – No business shall be transacted at a meeting of the Board unless at least six Directors including not less than two Executive (one of whom must be either the Chief Executive or the Director of Finance), and not less than three Non Executive Directors are present. The attendance of the Chair shall count as one of the Non Executive Directors.
- 4.38 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 4.39 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 7 or 8) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 Subject to Standing Order 3.3 and such directions as may be given by the Secretary of State, the Board may make arrangements for the exercise on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 6.1 or 6.2 or by a Director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2 **Emergency Powers** – The powers which the Board has retained to itself within these Standing Orders (SO 3.3) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for ratification.
- 5.3 **Delegation to Committees** – The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The Constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.
- 5.4 **Delegation of Officers** – Those functions of the Trust which have not been retained or reserved by the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Board.
- 5.5 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.
- 5.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance or other Executive Director to provide information and advise the Board in accordance with any statutory requirements or Monitor.
- 5.7 The arrangements made by the Board as set out in the “Reservation of Powers to the Board and Delegation of Powers” shall have effect as if incorporated in these Standing Orders.

6. COMMITTEES

- 6.1 **Appointment of Committees** – Subject to SO 3.7 and such directions as may be given by Constitution or by Monitor, the Board may and, if directed shall appoint committees of the Board, consisting of Directors of the Trust.
- 6.2 A committee appointed under SO 6.1 may, subject to such directions as may be given by Monitor or the Board appoint sub-committees consisting of members of the committee.

- 6.3 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board.
- 6.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 6.6 The Board shall approve the appointments to each of the Committees which it has formally constituted.
- 6.7 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with applicable statute and regulations and with the guidance issued by Monitor.
- 6.8 **Confidentiality** – A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 6.9 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

7. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

- 7.1 **Declaration of Interests** - In accordance with the Constitution and the National Health Service Act 2006 the Trust is required to maintain a Register of Interests of Directors. Directors must declare any relevant and material interest whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Board on appointment and on any subsequent occasion that an interest arises. Directors must disclose any relevant and material interest as soon as they are aware of it.
- 7.2 Interests which should be regarded as “relevant and material” include the following held by a Director:
- 7.2.1 Directorships, including Non Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies)
- 7.2.2 Ownership, part ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- 7.2.3 Majority or controlling shareholdings in organisations likely or possibly

seeking to do business with the NHS.

- 7.2.4 A position of authority in a charity or voluntary organisation in the field of health and social care.
- 7.2.5 Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS Services.
- 7.2.6 Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
- 7.3 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair or Secretary.
- 7.4 At the time Directors' interests are declared, they should be recorded in the Board minutes.
- 7.5 Directors' Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.6 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 7.7 There is no requirement for the interests of Directors' spouses or partners to be declared. [Note however that SO 8 which requires that the interest of Directors' partners, if living together, in contracts should be declared].
- 7.8 **Register of Interests** – In accordance with the Constitution, the Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all Directorships and other relevant and material interests which have been declared by both Executive and Non Executive Directors, as defined in SO 7.2
- 7.9 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated and presented to Board annually.
- 7.10 All officers will be required to declare any interest and a record of interests will be maintained.
- 7.11 The Register referred to in paragraph 7.8 will be available to the public.

8. DIRECTORS WITH ANY PECUNIARY INTEREST

- 8.1 Subject to the following provisions of this Standing Order, if a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or

- vote on any question with respect to it.
- 8.2 The Board shall exclude a Director from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.
- 8.3 For the purposes of this Standing Order any remuneration, compensation or allowances payable to a Director by virtue of paragraph 9 of Schedule 2 to the NHS & Community Care Act 1990, relating to payments of travelling expenses and other allowances as determined by the Secretary of State with the approval of the Treasury, shall not be treated as a pecuniary interest.
- 8.4 For the purpose of this Standing Order the Chair or a Director shall be treated, subject to SO 8.2 and SO 8.6, 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;
- and in the case of persons living together as partners the interest of one or other shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 8.5 A 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;
 - (b) of an interest in any company, body or person with which he is connected as mentioned in SO 8.5(a) which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.6 Where a 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,

this Standing Order shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.

- 8.7 Standing Order 8 applies to a committee or sub-committee of the Board as it applies to the Board and applies to any member of any such committee or sub-committee (whether or not he is also a Director) as it applies to a Director.

9. COMPLIANCE – OTHER MATTERS

- 9.1 All Directors of the Trust shall comply with the Standards of Business Conduct set by the Board for the guidance of all staff employed by the Trust.

- 9.2 All Directors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board.

- 9.3 All Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Directors as amended from time to time):

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

10. BOARD PERFORMANCE

The Chair shall, at least annually, lead a performance assessment process for the Board. This process should act as the basis for determining individual and collective professional development programs for Directors.

11. DISPOSALS

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

- (a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his nominated officer;

- (b) obsolete or condemned articles and stores, which may be disposed of in accordance with the Supplies policy of the Trust;
- (c) items to be disposed of with an estimated sale value of less than £5,000, this figure to be reviewed annually;
- (d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- (e) land or buildings concerning which guidance has been issued by Monitor but subject to compliance with such guidance.

12. MISCELLANEOUS

- 12.1 **Standing Orders to be given to Directors and Officers** – It is the duty of the Chief Executive to ensure that all new Directors and officers are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions
- 12.2 **Documents having the standing of Standing Orders** – Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into Standing Orders.

ANNEX 8 - PROTOCOL FOR THE ATTENDANCE OF MEMBERS OF THE PUBLIC AT MEETINGS OF THE BOARD OF DIRECTORS AND COUNCIL OF GOVERNORS HELD IN PUBLIC

1. Agenda
 - 1.1 The Trust will publish the Agenda and supporting documents for meetings of the Board of Directors and the Council of Governors on its website before the meeting.
 - 1.2 The Trust will have available copies in such format to facilitate their being viewed by members of the Public at the meeting.
- 2 Attendance
 - 2.1 Members of the media and public are able to attend and observe meetings of the Board of Directors and Council of Governors that are held in public.
 - 2.2 In attending meetings, members of the public should:
 - not speak or address the meeting during the proceedings,
 - refrain from unduly disturbing proceedings
 - 2.3 The media and public will be excluded from a meeting in respect of business relating to information that is commercially or personally confidential or on other proper grounds.
3. Questions
 - 3.1 There will normally be an opportunity on the Agenda for members of the public to ask questions relating to the items on the Agenda for meetings. Members of the public should refrain from asking questions that are not directly related to an agenda item and the details contained within corresponding supporting reports.
4. Recording
 - 4.1 Audio, video/visual recording, photography, blogging, emailing, texting or use of social media at meetings is not allowed by members of the public attending the meeting.
 - 4.2 Recognised media organisations may be given permission to record / film / photograph meetings. Any request must be directed through the Trust's Communications Team and arrangements approved by the Chair in advance of the commencement of the meeting.
 - 4.3 The Chair can require the recording / filming / photographing to cease should it not comply with the arrangements agreed and approved.
 - 4.4 At the commencement of a meeting, the Chair will announce should any requests to record / film / photograph a meeting have been made and approved.
5. Adherence
 - 5.1 Any person not adhering to the Protocol may be asked to leave the meeting.
 - 5.2 Any decision taken by the Chair on the interpretation of this protocol is final.