

Board Papers

Constitution V2.2 December 2012



The South Manchester Way

“It’s the way we do things round here.”



Foreword

The University Hospital of South Manchester NHS Foundation Trust (the "Trust") is a public benefit corporation that was established in accordance with the provisions of the National Health Service Act 2006.

As a body corporate the Trust has specific powers to contract in its own name and to act as a corporate trustee. In its latter role the Trust is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held on behalf of patients.

The principal places of business of the Trust are Wythenshawe Hospital and Withington Hospital.

This Constitution is for the regulation of the Trust's governance and the proceedings of its Council of Governors and Board of Directors.

The Trust's Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

- 1.1** The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity based on a recognition that patients come first, is a fundamental value of the Trust. Directors and Governors are expected to observe the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.
- 1.2** The Council of Governors and Board of Directors shall at all times seek to comply with the NHS Foundation Trust Code of Governance which is founded on "The Combined Code"

Everything done by the Trust should be able to stand the test of scrutiny, public judgement on propriety, and professional codes of conduct.

There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

Version Control Schedule

Version Control	Date	Comments
V1.0	1 Nov 2006	Monitor authorised UHSM NHS FT as a Foundation Trust
V2.0	10 Mar 2010	<p>Monitor ratified constitutional amendments which:</p> <ul style="list-style-type: none"> • Refer correctly to the NHS Act 2006 • Remove the Patient Constituency, replacing it by a sixth sub-constituency of the Public Constituency for 'the Rest of England & Wales' • Confirm the period of office for Governors as up to three years • Clarify the process for filling casual Council vacancies • Remove references to <i>initial</i> directors • Reduce the number of Appointed Governors on the Council from 12 to 5 • Provide for directors and Governors to attend meetings by telephone or video link • Refer to the Annual Public Meeting for the first time • Provide for the creation of a UHSM Governance Manual, containing Standing Financial Instructions and the Code of Conduct for Governors, schemes of reservation and delegation and committee terms of reference • Reduce the age of Membership from 16 years to 7 years
V2.1	11 Mar 2011	Monitor ratified further amendment; paragraph 24.4 <i>disqualification of directors</i> and the introduction of paragraph 24.5. the effect of which removes any impediment to a director of another NHS body being appointed to the UHSM Board, or to a director of UHSM being appointed to the Board of another NHS body. The definition of an NHS body is set out in the NHS Act 2006.
V2.2	17 Oct 2012	<p>Proposed amends to reflect commencement orders 1 & 2 under Health and Social Care Act 2012</p> <ul style="list-style-type: none"> • Requirement for the principal purpose (i.e. provision of goods and services for the health service in England) to be stated in the constitution; • Introduction of the new legal duty to ensure that income of NHS funded goods and services is greater than income from other sources; • Introduction of additional oversight and scrutiny by the Council of Governors over activities generating non-NHS income; • Replacement of HM Treasury with Secretary of State as regards giving guidance over FT accounts <p>For Monitor approval December 2012.</p>

Document Owner: Foundation Trust Secretary

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1. Name

The name of the foundation trust is the University Hospital of South Manchester NHS Foundation Trust (the Trust).

2. Principal purpose

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

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

2.2 The trust may provide goods and services for any purposes related to:

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

2.2.2 the promotion and protection of public health.

2.3 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

3. Powers

The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.

3.1 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

3.2 Any of these powers may be delegated to a committee of directors or to an executive director.

4. Membership and constituencies

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

4.1 The Public constituency; or

4.2 The Staff constituency.

5. Application

An individual who is eligible to become a member of the Trust may do so on application to the Trust. (See also paragraph 7.6.)

6. Public Constituency

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

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

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

7. Staff Constituency

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

7.1.1 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

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

7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

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

7.4 The Staff Constituency shall be divided into six descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

7.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

7.6 An individual who is:

7.6.1 eligible to become a member of the Staff Constituency; and

7.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency

shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

8. Restriction on membership

8.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

8.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

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

9. Council of Governors – composition

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

9.2 The composition of the Council of Governors is specified in Annex 3.

9.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

10. Council of governors – election of governors

- 10.1** Elections for elected members of the Council of Governors shall be conducted on a First Past the Post basis and in accordance with the Model Rules for Elections, as may be varied from time to time.
- 10.2** The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.
- 10.3** 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.
- 10.4** Elections for the Council of Governors shall be conducted in accordance with any regulations which may be made under section 59 of the 2006 Act.
- 10.5** An election, if contested, shall be by secret ballot.

11. Council of Governors – tenure

- 11.1** A governor (whether elected or appointed) may hold office for a total period of up to six years.
- 11.2** Subject to paragraph 11.1, an elected governor shall be eligible for re-election at the end of a term in office.
- 11.3** An elected governor will serve a term of office of three years.
- 11.4** An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

12. Council of Governors – disqualification and removal

- 12.1** The following may not become or continue as a member of the Council of Governors:
- 12.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 12.1.2** 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; or
- 12.1.3** a person who within the preceding five years has been convicted in the British Isles, or elsewhere, 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.
- 12.2** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 12.3** The constitution is to make provision for the removal of Governors. These are set out in Annex 5.

13. Vacancies amongst Governors

- 13.1** Where a vacancy arises on the Council of Governors for any reason other than expiry of terms of office, the following terms shall apply.
- 13.2** Where the vacancy arises amongst the appointed Governors, the Secretary shall request the appointing organisation to appoint a replacement to hold office for the remainder of the term of office.

13.3 Where the vacancy arises amongst the elected Governors, the Council of Governors shall:

- i. Invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election, at which time the seat will fall vacant and subject to election for any unexpired term of office; or
- ii. If there is no such next highest polling candidate for that seat willing to take office, be at liberty to call an election within three months to fill the seat for the remainder of the term of office.

14. Council of Governors – meetings of governors

14.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 22 below), shall preside at meetings of the Council of Governors.

14.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting following appropriate resolution by the Council of Governors made in accordance with its Standing Orders. The Chairman may exclude any member of the public from a meeting of the Council of Governors if he is interfering with or preventing the proper conduct of the meeting.

15. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

16. Council of Governors – conflicts of interest of governors

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

17. Council of Governors – travel expenses

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust.

18. Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Annex 5.

19. Board of Directors – composition

19.1 The Trust is to have a Board of Directors.

19.2 The Board of Directors shall be composed of not less than :

19.2.1 a non-executive Chairman;

19.2.2 five other non-executive directors; and

19.2.3 five executive directors.

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

19.4 The Chief Executive shall be the Accounting Officer.

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

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

19.7 One of the executive directors is to be a registered nurse or a registered midwife.

The number of directors may be increased provided always that at least half of the Board, excluding the chairman, comprises independent non-executive directors.

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

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

20.1 He is a member of the Public Constituency; or

20.2 Where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university; and

20.3 He is not disqualified by virtue of paragraph 24 below.

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

21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the Trust and the other non-executive directors.

21.2 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

22. Board of Directors – appointment of deputy chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

23. Board of Directors – appointment and removal of the Chief Executive and other executive directors

23.1 The non-executive directors shall appoint or remove the Chief Executive.

23.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

23.3 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

24. Board of Directors – disqualification

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

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

24.2 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;

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

24.4 A person who (if they were to be a member of the Trust) would be disqualified in terms of paragraphs 1 - 5 of Annex 8 (disqualification from membership) of this Constitution and / or who would be disqualified as a Governor of the Trust in terms of paragraphs 1.2 – 1.9 of Annex 5 (eligibility) of this Constitution.

24.5 A person who is a Governor of another Foundation Trust

25. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

26. Board of Directors – conflicts of interest of directors

If a director 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 Board of Directors, the director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

27. Board of Directors – remuneration and terms of office

27.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

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

28. Registers

The Trust shall have:

28.1 A register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

28.2 A register of members of the Council of Governors;

28.3 A register of interests of governors;

28.4 A register of directors; and

28.5 A register of interests of the directors.

29. Admission to and removal from the registers

29.1 The Board of Directors shall nominate a Registrar who may or may not be an employee. The Registrar may not be a Governor or the Chief Executive or the Finance Director.

29.2 The Registrar shall be responsible for keeping the registers up to date from information received by him, and the registers may be kept in either paper or electronic form.

29.3 Removal of members from the members' Register shall be in accordance with paragraph 8.3 of this Constitution.

30. Registers – inspection and copies

30.1 The Trust shall make the registers specified in paragraph 28 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

30.2 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 he so requests.

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

30.4

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

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

30.5 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.

31. Documents available for public inspection

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

31.1.1 a copy of the current constitution;

31.1.2 a copy of the current authorisation;

31.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

31.1.4 a copy of the latest annual report;

31.1.5 a copy of the latest information as to its forward planning; and

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

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

31.3 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.

32. Auditor

32.1 The Trust shall have an auditor.

32.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

33. Audit committee

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

34. Accounts

34.1 The Trust shall keep proper accounts and proper records in relation to the accounts.

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

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

- 34.4** 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.
- 34.5** The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 35.1** The Trust shall prepare an Annual Report and send it to Monitor.
- 35.2** The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 35.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 35.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 35.5** Each forward plan must include information about –
 - 35.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
 - 35.5.2** the income it expects to receive from doing so.
 - 35.5.3** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 35.5.1 the Council of Governors must –
 - 35.5.3.1** 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
 - 35.5.3.2** notify the directors of the trust of its determination.
- 35.6** Where the trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

36. Meeting of Council of Governors to consider annual accounts and reports

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

- 36.1** The annual accounts;
- 36.2** Any report of the auditor on them; and
- 36.3** The annual report.

37. Instruments

- 37.1** The Trust shall have a seal.
- 37.2** The seal shall not be affixed except under the authority of the Board of Directors.

38. 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.

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

Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act

Terms of authorisation are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

Voluntary organisation is a body, other than a public or local authority, the activities of which are not carried on for profit.

The **Accounting Officer** for the Trust is the Chief Executive of the Trust.

39. Changes to the Constitution

Any proposed changes to the Constitution of the Trust shall first be provisionally approved by the Board of Directors and then provisionally approved by the Council of Governors. The changes, so agreed provisionally, shall be submitted to Monitor for final approval.

ANNEX 1 THE PUBLIC CONSTITUENCY

- TG = Trafford General Hospital
- NMGH = North Manchester General Hospital
- HH = Salford Royal NHS FT
- MRI = Central Manchester University Hospitals NHS FT
- TDG = Tameside Hospital NHS FT
- CH = The Christie Hospital NHS FT
- SH = Stockport NHS FT
- MG = Macclesfield General Hospital
- WH = Wythenshawe Hospital
- WCH = Withington Community Hospital
- ⊙ = Manchester City Centre
- ✈ = Manchester Airport
- = Council boundaries



The Public Constituency

The Public Constituency of the Trust consists of five areas of Local Government electoral wards and a sixth area covering the remainder of the United Kingdom, as specified in the table below. Approximately 75% of the Trust's patients come from the first five wards.

The wards are grouped into six Areas as shown. Members in each Area shall elect Governors (in accordance with Annex 3) to represent them on the Council of Governors.

Area 1 (Part of Trafford)	Area 2 (Part of South Manchester)	Area 3 (Part of Central Manchester)	Area 4 (Part of Stockport)	Area 5 (Part of Macclesfield)	Area 6 (Rest of England and Wales)
Altrincham Ashton upon Mersey Bowdon Broadheath Brooklands Bucklow-St- Martins Clifford Davyhulme West Flixton Hale Barns Hale Central Longford Priory St Mary's Sale Moor Stretford Timperley Urmston Village	Baguley Brooklands Northenden Sharston Woodhouse Park	Burnage Chorlton Chorlton Park Didsbury East Didsbury West Fallowfield Gorton South Hulme Levenshulme Moss Side Old Moat Rusholme Whalley Range Withington	Bramhall North Bramhall South Bredbury and Woodley Brinnington and Central Cheadle and Gatley Cheadle Hulme North Cheadle Hulme South Davenport and Cale Green Edgeley and Cheadle Heath Hazel Grove Heald Green Heatons North Heatons South Marple South Reddish South	Alderley Edge Chelford Henbury High Legh Knutsford Bexton Knutsford Nether Knutsford Norbury Knutsford Over Mere Mobberley Plumley Prestbury Rainow Wilmslow Dean Row Wilmslow Fulshaw Wilmslow Handforth Wilmslow Hough Wilmslow Lacey Green Wilmslow Morley and Styal	
Minimum Membership					
15	25	20	10	5	25

Annex 2 The Staff Constituency

Class	Minimum number of Members
Medical Practitioners & Dental Practitioners *	20
Nursing and Midwifery Staff *	40
Other clinical staff *	20
Non-clinical staff*	20
Staff, providing services to the Trust, who are employed by South Manchester Healthcare Limited and its principle providers of soft and hard FM services under the terms of the PFI Concession Agreement	20
Volunteers working within Trust	20
Total	140

* Including staff providing services to the Trust who are eligible to be members but who are employed by Universities.

ANNEX 3 The Composition Of The Council

The Council of Governors consists of:-

- Governors appointed by partnership organisations; and
- Governors elected by:
 - (a) Members of the Public Constituency as defined in Annex 1 of this Constitution; and by
 - (b) Individuals within each class of the Staff Constituency defined in Annex 2 of this Constitution.

More than half of the Members of the Council of Governors shall be elected by those in (a) above.

Membership of the Council of Governors is detailed below:

Council of Governors	Total membership
Appointed Governors	5
Staff Governors (elected)	7
Public Governors (elected)	20
Total	32

Appointed Governors	Number of Appointees	Role
Principal Commissioning Primary Care Trust for the time being either NHS Manchester or NHS Trafford.	1	To represent main Trust commissioner and key NHS health economy partner.
Principal Local Councils for the time being Manchester City Council and Trafford Council.	2	To represent key local non-NHS health economy partners.
Principal University for the time being the University of Manchester	1	To ensure strong teaching and research partnership and to represent other University interests.
Primary Care Clinician for the time being as nominated by the Professional Executive Committee of either NHS Manchester or NHS Trafford	1	To ensure a voice for non-hospital health professional.
Total Appointed Governors	5	

Staff Elected Governors to represent:		Role
Class 1*: Medical Practitioners & Dental Practitioners	1	To assist the Trust in developing its service and ensure active representation from those who deliver the services
Class 2*: Nursing and Midwifery Staff	2	As above
Class 3*: Other Clinical Staff	1	As above
Class 4*: Non Clinical Staff	1	As above
Class 5: Staff employed by South Manchester Healthcare Limited and its principle providers	1	As above

of soft and hard FM services under the terms of the PFI Concession Agreement		
Class 6: Volunteers working within the Trust	1	As above
Total Staff Elected Governors	7	

* Staff in Classes 1 to 4 include those members of staff providing services to the Trust who are eligible to be Members but who are employed by Universities.

Public Elected Governors to represent:		Role
Constituencies specified in Annex 1 of this Constitution and consisting of		To represent the area in relation to which they are elected to serve.
Area 1 (Part of Trafford)	3	
Area 2 (Part of South Manchester)	5	
Area 3 (Part of Central Manchester)	4	
Area 4 (Part of Stockport)	2	
Area 5 (Part of Macclesfield)	1	
Area 6 (Rest of England and Wales)	5	
Total Public Elected Governors	20	

ANNEX 4 MODEL ELECTION RULES

The Trust has adopted the Model Election Rules contained in this Annex. It will determine the result of the election using the First Past the Post option.

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

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Part 1 – Interpretation

1. Interpretation

(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 body corporate known as Monitor, as provided by Section 61 of the Health and Social Care Act 2012; and

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

(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** - 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

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

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

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

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

Part 3 – Returning officer

4. Returning officer

(1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.
5. **Staff** – Subject to rule 64, 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 –
 - (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
 - (b) such remuneration and other expenses as the corporation may determine.
7. **Duty of co-operation** – 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** – The returning officer is to publish a notice of the election stating –
 - (a) the constituency, or class within a constituency, for which the election is being held,
 - (b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
 - (c) the details of any nomination committee that has been established by the corporation,
 - (d) the address and times at which nomination papers may be obtained;
 - (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
 - (f) the date and time by which any notice of withdrawal must be received by the returning officer
 - (g) the contact details of the returning officer, and
 - (h) the date and time of the close of the poll in the event of a contest.
9. **Nomination of candidates**
 - (1) Each candidate must nominate themselves on a single nomination paper.
 - (2) The returning officer-
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) 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**
 - (1) The nomination paper must state the candidate's -
 - (a) full name,
 - (b) contact address in full, and
 - (c) constituency, or class within a constituency, of which the candidate is a member.

- 11. Declaration of interests** – The nomination paper must state –
- (a) any financial interest that the candidate has in the corporation, and
 - (b) whether the candidate is a member of a political party, and if so, which party,
- and if the candidate has no such interests, the paper must include a statement to that effect.
- 12. Declaration of eligibility** – The nomination paper must include a declaration made by the candidate–
- (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and,
 - (b) for a member of the public or patient constituency, of the particulars of 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** – The nomination paper must be signed and dated by the candidate, indicating that –
- (a) they wish to stand as a candidate,
 - (b) their declaration of interests as required under rule 11, is true and correct, and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 14. Decisions as to the validity of nomination**
- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer–
- (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds –
- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show –
 - (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of 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

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

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

18. Method of election

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

Part 5 – Contested elections

19. Poll to be taken by ballot

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

20. The ballot paper

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) Every ballot paper must specify –
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies)

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –
 - (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public or patient 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.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- (1) The 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.
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer

- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–
 - (a) a ballot paper and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.

- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

- (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- (2) The covering envelope is to have –
 - (a) the address for return of the ballot paper printed on it, and
 - (b) pre-paid postage for return to that address.
- (3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed declaration of identity if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote – An individual who becomes a member of the 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

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

28. Spoilt ballot papers

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

29. Lost ballot papers

- (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.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –
 - (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original ballot paper, and
 - (c) has ensured that the declaration of identity if required has not been returned.
- (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”) –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

- (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 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.

- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers") –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies)

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

Procedure for receipt of envelopes

32. Receipt of voting documents

- (1) Where the returning officer receives a –
 - (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity 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.

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

- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper

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

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

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

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

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule stv44(4) below,

“preference” as used in the following contexts has the meaning assigned below–

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

“quota” means the number calculated in accordance with rule stv41 below,

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

“stage of the count” means –

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

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

“transferred vote” means a vote derived from a ballot paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

38. The count

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

Stv39. Rejected ballot papers

- (1)** Any ballot paper –
 - (a)** which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - (b)** on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
 - (c)** on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d)** which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.
- (2)** The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3)** The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

fpp39. Rejected ballot papers

- (1)** Any ballot paper –
 - (a)** which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - (b)** on which votes are given for more candidates than the voter is entitled to vote,
 - (c)** on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d)** which is unmarked or rejected because of uncertainty,shall, subject to paragraphs (2) and (3) below, be rejected and not counted.
- (2)** Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

- (3) A ballot paper on which a vote is marked –
- (a) elsewhere than in the proper place,
 - (b) otherwise than by means of a clear mark,
 - (c) by more than one mark,

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

- (4) The returning officer is to –
- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
 - (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- (5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –
- (a) does not bear proper features that have been incorporated into the ballot paper,
 - (b) voting for more candidates than the voter is entitled to,
 - (c) writing or mark by which voter could be identified, and
 - (d) unmarked or rejected because of uncertainty,

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

stv40. First stage

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

stv41. The quota

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- (3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

 - (a) according to next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of nontransferable votes.
- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.
- (3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped –

 - (a) according to the next available preference given on those papers for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.
- (7) The vote on each ballot paper transferred under paragraph (6) shall be at –

 - (a) a transfer value calculated as set out in paragraph (4)(b) above, or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.
- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

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

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

stv43. Supplementary provisions on transfer

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –
 - (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –
 - (a) record the total value of the votes transferred to each candidate,
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total,
 - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
 - (d) compare—
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (3) All ballot papers transferred under rule stv42 or stv44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.
- (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a nontransferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

stv44. Exclusion of candidates

- (1) If—
 - (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

- (b)** subject to rule stv45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).
- (2)** The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—
 - (a)** ballot papers on which a next available preference is given, and
 - (b)** ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).
- (3)** The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4)** The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5)** If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6)** The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7)** The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8)** Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9)** After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.
- (10)** The returning officer shall after each stage of the count completed under this rule—
 - (a)** record –
 - (i)** the total value of votes, or
 - (ii)** the total transfer value of votes transferred to each candidate,
 - (b)** add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c)** record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d)** compare—
 - (i)** the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

- (11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule stv42 and rule stv43.
- (12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest—
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

stv45. Filling of last vacancies

- (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- (2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- (3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

stv46. Order of election of candidates

- (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.
- (2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- (3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,
 - (b) give notice of the name of each candidate who he or she has declared elected–
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the University Hospital of South Manchester NHS Foundation Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
 - (c) give public notice of the name of each candidate whom he or she has declared elected.
- (2) The returning officer is to make –
- (a) the total number of votes given for each candidate (whether elected or not), and
 - (b) the number of rejected ballot papers under each of the headings in rule fpp39(5),
- available on request.

stv47. Declaration of result for contested elections

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the University Hospital of South Manchester NHS Foundation Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.
- (2) The returning officer is to make –
- (a) the number of first preference votes for each candidate whether elected or not,
 - (b) any transfer of votes,
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
 - (d) the order in which the successful candidates were elected, and
 - (e) the number of rejected ballot papers under each of the headings in rule stv39(1),
- available on request.

48. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

(1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of –

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the declarations of identity,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(3) The returning officer must endorse on each packet a description of –

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

50. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

51. Forwarding of documents received after close of the poll – Where –

- (a) any voting documents are received by the returning officer after the close of the poll, or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be re-sent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

52. Retention and public inspection of documents

- (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.
- (2) With the exception of the documents listed in rule 53(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.
- (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.

53. Application for inspection of certain documents relating to an election –

- (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –
 - (a) any rejected ballot papers, including ballot papers rejected in part,
 - (b) any disqualified documents, or the list of disqualified documents,
 - (c) any counted ballot papers,
 - (d) any declarations of identity, or
 - (e) the list of eligible voters,by any person without the consent of the Regulator.
- (2) A person may apply to the Regulator to inspect any of the documents listed in (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.
- (3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
 - (a) persons,
 - (b) time,
 - (c) place and mode of inspection,
 - (d) production or opening,and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- (4) On an application to inspect any of the documents listed in paragraph (1), –
 - (a) in giving its consent, the regulator, and

- (b) and 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 –
 - (i) that his or her vote was given, and
 - (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to
 - (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the 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.
- (2) Where a new election is ordered under paragraph (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.
- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to –
 - (a) count and record the number of ballot papers that have been received, and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of –
 - (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –
 - (a) publish a notice stating that the candidate has died, and

- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

- 55. **Election expenses** – Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application to the regulator under Part 11 of these rules.
- 56. **Expenses and payments by candidates** - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –
 - (a) personal expenses,
 - (b) travelling expenses, and expenses incurred while living away from home, and
 - (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.
- 57. **Election expenses incurred by other persons**
 - (1) No person may -
 - (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
 - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
 - (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation

- (1) The corporation may –
 - (a) compile and distribute such information about the candidates, and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.
- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –
 - (a) objective, balanced and fair,

- (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (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.

59. Information about candidates for inclusion with voting documents

- (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.
- (2) The information must consist of –
- (a) a statement submitted by the candidate of no more than 250 words, and
 - (b) a photograph of the candidate.

60. Meaning of “for the purposes of an election”

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.

- (3)** An application may only be made to the Regulator by -
 - (a)** a person who voted at the election or who claimed to have had the right to vote, or
 - (b)** a candidate, or a person claiming to have had a right to be elected at the election.
- (4)** The application must –
 - (a)** describe the alleged breach of the rules or electoral irregularity, and
 - (b)** be in such a form as the Regulator may require.
- (5)** The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6)** If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
 - (a)** The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
 - (b)** The determination by the person or persons nominated in accordance with Rule 61(7) 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.
 - (c)** The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy

- (1)** The following persons –
 - (a)** the returning officer,
 - (b)** the returning officer's staff,must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –
 - (i)** 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,
 - (ii)** the unique identifier on any ballot paper,
 - (iii)** the candidate(s) for whom any member has voted.
- (2)** No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3)** The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

- 63. Prohibition of disclosure of vote** – 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.
- 64. Disqualification** – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –
- (a) a member of the corporation,
 - (b) an employee of the corporation,
 - (c) a director of the corporation, or
 - (d) employed by or on behalf of a person who has been nominated for election
- 65. Delay in postal service through industrial action or unforeseen event** – If industrial action, or some other unforeseen event, results in a delay in –
- (a) the delivery of the documents in rule 24, or
 - (b) the return of the ballot papers and declarations of identity,

the returning officer 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 5 - Additional Provisions – Council of Governors

1. Eligibility to be a Governor

A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:

- 1.1** He is a Director of the Trust, or a Governor or Director of another NHS Foundation Trust or any other NHS body, unless such Foundation Trust or NHS body is an appointing organisation which is appointing him under this constitution;
- 1.2** He is under eighteen years of age;
- 1.3** He is a member of a local authority's scrutiny committee covering health matters;
- 1.4** Being a member of one of the public constituencies, he fails to sign a declaration in the form specified by the Council of Governors of the particulars of his qualification to vote as a member of the Trust, and that he is not prevented from being a member of the Council of Governors;
- 1.5** He is or has been subject to a sex offender order;
- 1.6** He is incapable by reason of mental disorder, illness or injury of managing or administering his property and affairs;
- 1.7** He has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 1.8** He is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest; or
- 1.9** He has had his name removed from any List prepared pursuant to sections 91, 106, 123 or Chapter 6 of the National Health Service Act 2006, and has not subsequently had his name included in such a list.

2. Requirement of Governor to notify Trust

Where a person has been elected or appointed to be a governor and he becomes disqualified from office under paragraph 12 of this Constitution, he shall notify the Secretary in writing of such disqualification.

3. Termination of office and removal of Governors

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

- 3.1** He resigns by notice in writing to the Secretary;
- 3.2** It otherwise comes to the notice of the Secretary at the time the Governor takes office or later that the Governor is disqualified;
- 3.3** He fails to attend two meetings in any Financial Year, unless the other Governors are satisfied that:
 - (a)** the absences were due to reasonable causes; and
 - (b)** he will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
- 3.4** In the case of an elected Governor, he ceases to be a member of the Trust;

- 3.5 In the case of an appointed Governor, the appointing organisation terminates the appointment;
- 3.6 He has failed to undertake any training which the Council of Governors requires all Governors to undertake;
- 3.7 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 Trust's Code of Conduct;
- 3.8 He is removed from the Council of Governors by a resolution approved by a majority of the remaining Governors present and voting at a General Meeting on the grounds that:
 - (a) He has committed a serious breach of the Trust's Code of Conduct; or
 - (b) He has acted in a manner detrimental to the interests of the Trust; or
 - (c) He has failed to discharge his responsibilities as a Governor.

4. Vacancies amongst Governors

Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the provisions of paragraph 13 of the Constitution will apply.

5. Roles and Responsibilities

The roles and responsibilities of the governors are enshrined in Monitor's Code of Governance for NHS Foundation Trusts as described in the current Governance Manual.

6. Appointment of Non-Executive Directors (including Chairman and Deputy Chairman)

- 6.1 The Board of Directors will identify the balance of individual skills and experience it requires at the time a vacancy arises and, accordingly, draw up a job description and person profile for each new appointment.
- 6.2 Suitable candidates will be identified by the Board of Directors which may, if it considers it appropriate in particular circumstances, engage an external organisation, recognised as an expert in this field, to assist it in the whole process (including the work involved in 1. above).
- 6.3 The Council of Governors shall establish a Committee of the Council and the Board to assist in the process of appointment of non-executive Directors (including Chairman and Deputy Chairman). The Committee shall comprise three Governors and two Directors (at least one of whom will be a non-executive Director). The Committee may have an independent assessor in attendance if appropriate.
- 6.4 On expiry of the initial non-executive Directors current terms of appointment and on any subsequent vacancy, the Committee shall consider whether to recommend to the Council of Governors to reappoint the retiring non-executive or Chairman or Deputy Chairman. The Committee may not make any such recommendation other than for a first renewal of the appointment of a non-executive director or Chairman without first taking the steps outlined in 1 & 2 above. If the Council of Governors does not so appoint, or if the individual does not wish to continue, or if the Committee does not consider the reappointment appropriate then the Board of Directors shall be asked to identify suitable new candidates in accordance with the procedure outlined above.
- 6.5 Suitable candidates identified by the Board of Directors, together with any comments from the Board, will be considered by the Committee. The Committee shall also take full account of the job description and person profile drawn up by the Board of Directors and shall recommend to the Council an individual for an appointment. At a general meeting the Council of Governors shall either appoint the recommended individual or invite the Committee to make an alternative recommendation.

7. Remuneration of the Chairman and other Non-Executive Directors

In order to determine the proper level of remuneration and allowances that should be paid to the Chairman and other Non-Executive Directors the Council may, from time to time, and at least every three years shall, consult, at the Trust's expense, with external professional advisers.

Annex 6 – Standing Orders – Council of Governors

Foreword

The University Hospital of South Manchester NHS Foundation Trust (the “Trust”) is a public benefit corporation established in accordance with the provisions of the National Health Service Act 2006.

As such, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In its latter role the Trust is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held on behalf of patients.

The principal places of business of the Trust are Wythenshawe Hospital and Withington Hospital.

These Standing Orders (SOs) are for the regulation of the Trust's Council of Governors' proceedings and business.

The Trust's Code of Business Conduct lays down certain procedures where there is concern about possible conflicts of interest of Governors.

The Trust's Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity, based on a recognition that patients come first, is a fundamental value of the Trust. Governors are expected to observe the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership (see paragraph 9 of the Council Standing Orders – Annex 6).

Everything done by the Trust should be able to stand the test of scrutiny, public judgement on propriety, and professional codes of conduct.

There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

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1. Interpretation

- 1.1. Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

"TRUST" means the University Hospital of South Manchester NHS Foundation Trust.

"MEMBER" means a person registered as a member of a constituency in terms of paragraph 4 of this Constitution.

"GOVERNOR" means a person elected or appointed to the Council of Governors in terms of paragraph 9 of this Constitution.

"DIRECTOR" means a person appointed to the Board of Directors in terms of paragraph 19 of this Constitution.

"CHAIRMAN" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The Chairman shall be deemed to include the non-executive director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

"COUNCIL" means the Council of Governors, formally constituted in accordance with this Constitution, meeting in public and presided over by the Chairman.

"BOARD" means the Board of Directors, formally constituted in accordance with this Constitution and consisting of the Chairman, and non-executive directors, appointed by the Council of Governors, and the executive directors, appointed by the non-executive directors and (except for his own appointment) by the Chief Executive.

"COMMITTEE OF THE COUNCIL" means a committee appointed by the Council of Governors with specific Terms of Reference, chair, and membership approved by the Council.

"COMMITTEE OF THE BOARD" means a committee appointed by the Board of Directors with specific Terms of Reference, chair, and membership approved by the Board.

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

"ACCOUNTING OFFICER" is the Chief Executive of the Trust.

"OFFICER" means an employee of the Trust.

"BUDGET" means a resource, expressed in financial terms, approved by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

- 1.2. Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Chief Executive and Director of Finance).

2. General Information

2.1 The purpose of the Council of Governors Standing Orders is to ensure that the highest standards of Corporate Governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance which is founded on "The Combined Code" and the Trust's Code of Conduct for Governors.

2.2 All business shall be conducted in the name of the Trust.

2.3 The Board of Directors shall appoint trustees to administer, separately, charitable funds received by the Trust and for which they are accountable to the Charity Commission.

2.4 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a Governor save where the Governor has acted recklessly. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements the Board shall put in place appropriate insurance provision to cover such indemnity.

3. Composition of the Council of Governors

3.1 The composition of the Council of Governors shall be in accordance with paragraph 9 of the Trust's Constitution.

3.2 Appointment and Removal of the Chairman and Deputy Chairman of the Trust

The Chairman or Deputy Chairman of the Trust will preside over meetings of the Council of Governors, such persons being appointed and removed by the Governors in accordance with the provisions of paragraphs 21 and 22 of the Constitution.

3.3 Duties of Deputy Chairman - Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his/her duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman.

4. Meetings of the Council of Governors

4.1 Meetings held in Public

4.1.1 Meetings of the Council of Governors must be open to the public subject to the provisions of paragraph 4.1.2 below.

4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:

- (i)** publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- (ii)** there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

4.1.3 The Chairman may exclude any member of the public from the meeting of the Council if he is interfering with or preventing the reasonable conduct of the meeting.

4.1.4 Meetings of the Council of Governors shall be held four times each year at times and places that the Council of Governors may determine.

4.1.5 The Council may invite the Chief Executive, and other appropriate Directors, to attend any meeting of the Council to enable Governors to raise questions about the Trust affairs.

4.2 Calling Meetings

Notwithstanding, 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if without so refusing the Chairman does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of Governors.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him at least five clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting subject to paragraph 4.3.3.

4.3.2 Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least 50% of Governors.

4.3.3 In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of Governors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

4.4 Setting the Agenda

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

4.4.2 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 Chairman of Meeting

At any meeting of the Council of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the deputy Chairman shall preside. Otherwise, such Governor as the Governors present shall choose, shall preside.

4.6 Notices of Motions

4.6.1 A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the Meeting to the Chairman, who shall insert in the Agenda for the Meeting. All notices so received are subject to the notice given 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 section 4.3 of these Standing Orders.

- 4.6.2** A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 4.6.3** Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who give it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate.
- 4.6.4** The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5** When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- (a)** An amendment to the motion.
 - (b)** The adjournment of the discussion or the meeting.
 - (c)** The appointment of an ad hoc committee to deal with a specific item of business.
 - (d)** That the meeting proceed to the next business.
 - (e)** That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

In the case of motions under (d) and (e), to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

4.7 Chairman's Ruling

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

4.8 Voting

- 4.8.1** Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.8.2** All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.8.3** If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.8.4** If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.5** In no circumstances may an absent Governor vote by proxy although the Council may agree that its Governors may participate in its meetings by telephone, video or video media link. Subject to participation in a meeting in this manner (which shall be deemed to constitute presence in person at the meeting) absence is defined as being absent at the time of the vote.

4.9 Suspension of Standing Orders (SOs)

- 4.9.1** Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.
- 4.9.2** A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.9.3** A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the directors.
- 4.9.4** No formal business may be transacted while SOs are suspended.
- 4.9.5** The Trust's Audit Committee shall review every decision to suspend SOs.

4.10 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

- (a)** notice of motion has been given; and
- (b)** no fewer than half the total of the Governors vote in favour of amendment; and
- (c)** at least two-thirds of the Governors are present; and
- (d)** the variation proposed does not contravene a statutory provision.

4.11 Record of Attendance

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

4.12 Minutes

- 4.12.1** The Minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.
- 4.12.2** No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.12.3** Minutes shall be circulated in accordance with the Governors' wishes. The Minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Section 4.1 of these Standing Orders (required by Code of Practice on Openness in the NHS).

4.13 Quorum

- 4.13.1** No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of the Governors are present.
- 4.13.2** If a Governor 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 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 Emergency Powers - The powers which the Council of Governors has retained to itself within these Standing Orders may in emergency be exercised by the Chairman after having consulted at least five elected Governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council for ratification.

5.2 Delegation to Committees - The Council of Governors may agree from time to time to the delegation of its duties to committees or sub-committees, which it has formally constituted. To ensure clarity of purpose, the Constitution and terms of reference of these committees, or sub-committees, and their specific powers shall be laid out in accordance with Trust policy and approved by the Council.

5.3 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.

6. Committees: Further provisions

6.1 Save as stipulated in Annex 5 of this Constitution (Appointment of Non-Executive Directors) the Council of Governors may appoint committees of the Council consisting wholly of persons who are Governors. Non-Governors may attend such committees if appropriate under the Committee's terms of reference but they shall have no vote.

6.2 A committee so appointed may appoint sub-committees consisting wholly of persons who are Governors. Non-Governors may attend such sub-committees if appropriate under the sub-committee's terms of reference but they shall have no vote.

6.3 These Standing Orders, as far as they are applicable, shall apply also, with appropriate alteration, to meetings of any committees or sub-committees so established by the Council.

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 Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.

6.5 Committees may not delegate their powers to a sub-committee unless expressly authorised by the Council of Governors.

6.6 The Council of Governors shall approve the membership to all committees/sub committees that it has formally constituted and shall determine the Chairman of each committee/subcommittee.

7. Confidentiality

7.1 A member of the Council of Governors or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.

7.2 A Governor or a non-governor in attendance at a committee shall not disclose any matter dealt with by, the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

8. Declaration of Interests and Register of Interests

8.1 Declaration of Interests

Governors are required to comply with the Trust's standards of business conduct and to declare interests that are relevant and material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

8.1.1 Interests regarded as "relevant and material" are:

- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- (b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (c) Employment with any private company, business or consultancy.
- (d) Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.
- (e) A position of authority in a charity or voluntary organisation in the field of health and social care.
- (f) Any connection with a voluntary or other organisation contracting for NHS services.

8.1.2 If a Governor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

8.1.3 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.

8.1.4 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

8.1.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision.

8.1.6 There is no requirement for the interests of Governors' spouses or partners to be declared except where a Governor is cohabiting with his/her spouse or partner, whereby any interest of a spouse or partner in a contract shall be declared.

8.2 Register of Interests

8.2.1 The Registrar will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

8.2.2 Details of the Register will be kept up to date and reviewed annually.

8.2.3 The Register will be available to the public.

9. Compliance - Other Matters

9.1 Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.

9.2 Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct as amended from time to time):

1. selflessness;
2. integrity;
3. objectivity;
4. accountability;
5. openness;
6. honesty; and

7. leadership.

10. Resolution of Disputes with Board of Directors

10.1 The Council of Governors has three main roles:

Advisory – It communicates to the Board the wishes of Members and the wider community.

Guardianship – It ensures that the Trust is operating in accordance with its Statement of Purpose and is compliant with its Authorisation. In this regard it acts in a trustee role for the welfare of the organisation.

Strategic - It advises on a longer term direction to help the Board effectively determine its policies.

10.2 The Board of Directors has overall responsibility for running the affairs of Trust. Its role is to:

- Take advice from the Council;
- Set a strategic direction;
- Set organisational and operational targets;
- Minimise risk;
- Assess achievement against the above objectives;
- Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives; and
- Ensure that the highest standards of Corporate Governance are applied throughout the organisation.

10.3 Should a dispute arise between the Council and the Board of Directors then the disputes resolution procedure set out below recognises the different roles of the Council and the Board as described above.

10.3.1 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) shall first endeavour through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties.

10.3.2 Failing resolution under 10.3.1 above then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.3.3 The Trust Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

10.3.4 The Chairman or Deputy Chairman (if the dispute involves the Chairman) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.3.1 above shall be repeated.

10.3.5 If, in the opinion of the Chairman or Deputy Chairman (if the dispute involves the Chairman), and following the further discussions prescribed in 10.3.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly.

10.3.6 On the satisfactory completion of this disputes process the Board of Directors shall implement agreed changes.

10.3.7 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.

10.4 Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its Authorisation.

11. Council Performance

The Chairman shall, at least annually, lead a performance assessment process for the Council to enable the Council to review its roles, structure, composition and procedures taking into account emerging best practice.

12. Changes to Council of Governors Standing Orders

For sake of clarity future amendments to these Standing Orders by the Council are not to be regarded as a change to the Trust's Constitution unless such amendments have, or potentially have, a significant and material impact on the integrity of the Trust's Internal Control and Assurance arrangements and its risk profile.

Annex 7 – Standing Orders – Board Of Directors

Foreword

The University Hospital of South Manchester NHS Foundation Trust (the “Trust”) is a public benefit corporation that was established in accordance with the provisions of the National Health Service Act 2006.

As a body corporate the Trust has specific powers to contract in its own name and to act as a corporate trustee. In its latter role the Trust is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held on behalf of patients.

The principal places of business of the Trust are Wythenshawe Hospital and Withington Hospital.

These Standing Orders (SOs) are for the regulation of the Trust Board's proceedings and business.

The Trust's Code of Business Conduct lays down certain procedures where there is concern about possible conflicts of interest of board directors.

The Trust's Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

- 1.1** The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity, based on a recognition that patients come first, is a fundamental value of the Trust. Directors are expected to observe the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty, and leadership.
- 1.2** The Board shall at all times seek to comply with the NHS Foundation Trust Code of Governance which is founded on “The Combined Code.”

Everything done by the Trust should be able to stand the test of scrutiny, public judgement on propriety, and professional codes of conduct.

There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

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1.1 Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

"TRUST" means the University Hospital of South Manchester NHS Foundation Trust.

"MEMBER" means a person registered as a member of a constituency in terms of paragraph 4 of this Constitution.

"GOVERNOR" means a person elected or appointed to the Council of Governors in terms of paragraph 9 of this Constitution.

"DIRECTOR" means a person appointed to the Board of Directors in terms of paragraph 19 of this Constitution.

"CHAIRMAN" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The Chairman shall be deemed to include the non-executive director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

"Council" means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by the Chairman.

"BOARD" means the Board of Directors, formally constituted in accordance with this Constitution and consisting of the Chairman, and non-executive directors, appointed by the Council of Governors, and the executive directors, appointed by the non-executive directors and (except for his own appointment) by the Chief Executive.

"COMMITTEE OF THE COUNCIL" means a committee appointed by the Council of Governors with specific Terms of Reference, chair, and membership approved by the Council.

"COMMITTEE OF THE BOARD" means a committee appointed by the Board of Directors with specific Terms of Reference, chair, and membership approved by the Board

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

"ACCOUNTING OFFICER" is the Chief Executive of the Trust.

"OFFICER" means an employee of the Trust.

"BUDGET" means a resource, expressed in financial terms, approved by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust

"MONITOR" means the body corporate known as Monitor, as provided by Section 61 of the Health and Social Care Act 2012.

1.2 Save as permitted by law, the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Chief Executive and Director of Finance).

2. General Information

- 2.1** The Purpose of the Board Standing Orders is to ensure that the highest standard Corporate Governance and conduct are achieved in the Board and throughout the organisation. The Board shall at all times seek to comply with the NHS Foundation Trust Code of Governance which is founded on "The Combined Code."
- 2.2** All business shall be conducted in the name of the Trust.
- 2.3** The Directors shall appoint trustees to administer separately Charitable Funds received by the Trust and for which they are accountable to the Charity Commission.

3. The Board

- 3.1** The composition of the Board shall, as a minimum, be:

A Non-Executive Chairman

Five Independent Non-Executive Directors.

Five Executive Directors including the:

Chief Executive (the Accounting Officer);

Finance Director;

A registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984); and

A registered nurse or a registered midwife.

The number of Directors may be increased, with the approval of the Board, provided always that at least half the Board, excluding the Chairman, comprises Non-Executive Directors determined by the Board to be independent.

- 3.2** The Board shall approve a formal declaration process to enable it to assess the independent status or otherwise of each Non-Executive Director. The process shall apply to all proposed new appointees and annually to those already appointed. The Chief Executive and Chairman of the Audit Committee shall review the declarations and shall report the outcome to the Board of Directors. The declaration of the Chairman of the Audit Committee, himself a Non-Executive director under the terms of this Constitution, shall be reviewed and the outcome reported to the Board by the Trust Chairman and the Chief Executive. The Board shall then determine the status of each Non-Executive Director.
- 3.3** The Chairman shall appoint one of the Independent Non-Executive Directors as the 'Senior Independent Director'" in consultation with the Governors and other Non-Executive Directors. The Chairman shall normally, but not necessarily, appoint the Deputy Chairman to this position.
- 3.4** The Chairman and non-executive directors are appointed/removed by the Council of Governors in accordance with paragraph 21 of this Trust Constitution.
- 3.5** In accordance with paragraph 23 of this Constitution the Non Executive Directors shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors) and a committee consisting of the Chairman, Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.
- 3.6** The term of office of each of the Directors shall be determined in accordance with paragraph 27 of this Constitution.
- 3.7** For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council of Governors shall, in accordance with paragraph 22 of this Constitution, appoint one of the Non-Executive Directors to be Deputy Chairman.

- 3.8** Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he has been unable to perform his/her duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman (if any) or otherwise to a non-executive director appointed by the Board to preside for the time being over its meetings.
- 3.9** Where more than one person is appointed jointly to a post then those persons may, with the approval of the Board, be appointed as an executive director jointly, and shall count as one person.
- 3.10** The Board shall appoint a Secretary who, under the direction of the Chairman, shall ensure good information flows within the Board and Council and their Committees, between Directors and Governors, and between senior management and Non-Executive Directors. The Secretary shall also advise the Board and Council on all governance matters and shall facilitate induction and professional development as required.
- 3.11** The Board's Nomination Committee shall meet to appraise the Chairman's performance, at least annually, and on such other occasions as are deemed by the Board to be appropriate, with or without the Chairman present, and led by the Senior Independent Non-Executive Director. The Committee shall prepare a written appraisal and circulate it in confidence to all Non-Executive Directors including the Chairman. If appropriate, and with the approval of the majority of the Non-Executive Directors, the Senior Independent Non-Executive Director shall make recommendations to the Chairman or he shall appraise the Chief Executive of the Committee's report and together they may make recommendations to the Chairman. Exceptionally the Senior Independent Director may, with the approval of the Committee, disclose the Committee's recommendations to the Board sitting in Private Session.
- 3.12** The Board shall approve a formal Letter of Understanding between the Chairman and Chief Executive setting out, as clearly as possible, a division of their responsibilities. The Letter shall be reviewed and modified as the Board shall, from time to time, decide.
- 3.13** A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a Director save where the Director has acted recklessly. On behalf of the Directors, and as part of the Trusts overall insurance arrangements the Board of Director shall put in place appropriate insurance provision to cover such indemnity.
- 3.14** Non-Executive Directors may, at the Trust's expense, seek external advice or appoint an external adviser on any material matter of concern provided the decision to do so is a collective one by the majority of Non-Executive Directors.

4. Meetings of the Board

- 4.1 Calling Meetings:** The Chairman may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more directors may forthwith call a meeting.
- 4.2 Notice of Meetings:** Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to him at least five clear days before the meeting. Lack of service of the notice on any director shall not affect the validity of a meeting **subject to paragraph 4.4.**

- 4.3** Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least two-thirds of Directors (Executive and Non-Executive Directors taken together) but to include a minimum of two Executive Directors and two Non-Executive Directors.
- 4.4** In the case of a meeting called by directors in default of the Chairman, the notice shall be signed by those directors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.5** Failure to serve such a notice on more than three directors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 4.6** **Setting the Agenda:** The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 4.7** A director desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.
- 4.8** **Chairman of Meeting:** At any meeting of the Trust, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman appointed by the Council of Governors to take on the Chairman's duties shall preside. Otherwise, such non-executive director as the directors present shall choose shall preside.
- 4.9** **Notices of Motions:** A director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, 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 paragraph 4.4 above.
- 4.10** A motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 4.11** Notice of a motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the directors who gives it and also the signature of four other directors. When any such motion has been disposed of by the Board it shall not be competent for any director, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate.
- 4.12** The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.13** When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- (a)** An amendment to the motion;
 - (b)** The adjournment of the discussion or the meeting;
 - (c)** The appointment of an ad hoc committee to deal with a specific item of business;
 - (d)** That the meeting proceed to the next business; and/or
 - (e)** That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

In the case of motions under (d) and (e), to ensure objectivity motions may only be put by a director who has not previously taken part in the debate.

- 4.14 Chairman'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 Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.
- 4.15 Voting:** Decisions at meetings shall be determined by a majority of the votes of the directors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.16** All decisions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the directors present so request.
- 4.17** 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 abstain.
- 4.18** If a director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.19** In no circumstances may an absent director vote by proxy although the Board may agree that its members may participate in its meetings by telephone, video or video media link. Subject to participation in a meeting in this manner (which shall be deemed to constitute presence in person at the meeting) absence is defined as being absent at the time of the vote.
- 4.20** An officer who has been appointed formally by the Board to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board to represent an executive director during a period of incapacity or temporary absence without status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.
- 4.21 Joint Directors**
Where an executive director post is shared by more than one person:
(a) each person shall be entitled to attend meetings of the Board;
(b) each of those persons shall be eligible to vote in the case of agreement between them;
(c) in the case of disagreement between them no vote should be cast; and
(d) the presence of those persons shall count as one person.
- 4.22 Suspension of Standing Orders (SOs)**
Except where this would contravene any statutory provision, 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 two executive directors and two non-executive directors, and that a majority of those present vote in favour of suspension.
- 4.23** A decision to suspend SOs shall be recorded in the minutes of the meeting.

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

4.25 No formal business may be transacted while SOs are suspended.

4.26 The Audit Committee of the Trust shall review every decision to suspend SOs.

4.27 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

- a notice of motion has been given; and
- no fewer than half the total of the Trust's non-executive directors vote in favour of amendment; and
- at least two-thirds of the directors are present; and
- the variation proposed does not contravene a statutory provision.

4.28 Record of Attendance

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

4.29 Minutes

The Minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

4.30 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.31 Minutes shall be circulated in accordance with directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public (required by Code of Practice on Openness in the NHS).

4.32 Quorum

No business shall be transacted at a meeting of the Board unless at least one-third of the whole number of the directors are present including at least one executive director and one non-executive director.

4.33 An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.

4.34 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 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.

4.35 Annual Public Meeting

The Board shall arrange for an annual public meeting to be held within 9 months of the end of each financial year, at which the registers and documents referred to in paragraphs 28 and 31 of this Constitution shall be available for inspection at the meeting, subject to the provisions of paragraph 30.1 and 30.2 of the Constitution.

5 Arrangements for the Exercise of Functions by Delegation

- 5.1** The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, 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 may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.
- 5.3 Delegation to Committees** – Save as stipulated in Annex 5 of this Constitution (appointment of Non-Executive Directors) 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 to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to one of its Committees shall be exercised on behalf of the Board by the Chief Executive. He/she shall determine which functions he/she will perform personally and shall nominate officers to undertake remaining functions but still retain an accountability for these to the Board.
- 5.5** The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals that 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 any executive director to provide information and advise the Board in accordance with any statutory requirements.
- 5.7** The arrangements made by the Board as set out in the "Scheme of Delegation" shall have effect as if incorporated in these Standing Orders.
- 5.8 Governance Manual** – The Trust shall produce a Governance Manual which shall provide details of the matters that the Board has, for the time being, reserved for itself and/or delegated to Board Committees (including the Terms of Reference and membership of each Board Committee) and/or delegated to the Chief Executive and Executive Directors of the Trust. The Governance Manual shall include the Code of Conduct for Governors and the Trust's Standing Financial Instructions. The Governance Manual shall be reviewed at least annually by the Board and, if necessary amended.

6. Committees

6.1 Formation of Committees

The Board may form committees of the Board consisting of directors of the Trust.

- 6.2** A committee so formed may form sub-committees consisting of directors of the Trust .
- 6.3** The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Trust.

- 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; such authorisation to be subject to the provisions of paragraph 3 of the Constitution.
- 6.6** The Board shall approve the appointments to each of the committees that it has formally constituted. Where the Board determines that persons, who are neither directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.
- 6.7** Where the Trust is required to appoint persons to a committee which is to operate independently of the Trust, such appointment shall be approved by the Trust Board.
- 6.8** **Confidentiality**
A member of the Board or a committee of the Board shall not disclose a matter dealt with by, or brought before, the Board/committee without its permission or 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 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

Declaration of Interests

The Trust's Standards of Business Conduct require Directors to declare interests that are relevant and material to the Board.

- 7.1** Interests regarded as "relevant and material" are:
- (a)** Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - (b)** Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - (c)** Employment with any private company, business or consultancy.
 - (d)** Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - (e)** A position of authority in a charity or voluntary organisation in the field of health and social care.
 - (f)** Any connection with a voluntary or other organisation contracting for NHS services.
- 7.2** If Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman.
- 7.3** At the time Directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next board meeting following the change occurring.

7.4 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

7.5 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.

7.6 There is no requirement for the interests of Directors' spouses or partners to be declared. [Note however that the Membership and Procedure regulations require that the interest of Directors' spouses, if living together, in contracts should be declared].

7.7 Register of Interests

The Chief Executive 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 that have been declared by both executive and non-executive Directors.

7.8 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.

7.9 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

8. Disability of Directors in Proceedings on Account of Pecuniary Interest

8.1 Subject to the following provisions of this Standing Order, if the Chairman or 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 or she 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 the Chairman or a director from a meeting of the Board while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.

8.3 The Board, as it may think fit, may remove any disability imposed by this Standing Order in any case in which it appears to the Board that, in the interests of the National Health Service, the disability shall be removed. Such action shall have the support of at least two-thirds of the Directors (including two Executive and two Non-Executive Directors).

8.4 Any remuneration, compensation or allowances payable to a Director of the Trust by virtue of such appointment or employment shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.5 For the purpose of this Standing Order the Chairman or a Director shall be treated, subject to Para 8.3 and Para 8.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (a)** he/she, or a nominee of he/she, 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/she 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 the interest of one partner shall, if

known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

8.6 The Chairman or 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/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body; or
- (b) of an interest in any company, body or person with which he/she is connected as mentioned above 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.

8.7 Where the Chairman or 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/her 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/her duty to disclose his/her interest.

8.8 This Standing Order 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 of the Trust) as it applies to a Director of the Trust.

9. Compliance - Other Matters

Directors shall comply with Standing Financial Instructions prepared by the Finance Director and approved by the Board for the guidance of all staff employed by the Trust.

9.1 Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life:
selflessness; integrity;
objectivity; accountability;
openness; honesty; and leadership.

10. Resolution of Disputes with the Council of Governors

10.1 The Council of Governors has three main roles:

- **Advisory** – It communicates to the Board the wishes of Members and the wider community.
- **Guardianship** – It ensures that the Trust is operating in accordance with its Statement of Purpose and is compliant with its Authorisation. In this regard it acts in a trustee role for the welfare of the organisation.
- **Strategic** - It advises on a longer term direction to help the Board effectively determine its policies.

10.2 The Board of Directors has overall responsible for running the affairs of Trust. Its role is to:

- Take advice from the Council;

- Set a strategic direction;
- Set organisational and operational targets;
- Minimise risk;
- Assess achievement against the above objectives;
- Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives; and
- Ensure that the highest standards of Corporate Governance are applied throughout the organisation.

10.3 The disputes resolution procedure recognises the different roles of the Council and the Board as described above.

10.4 The Chairman, or Deputy Chairman (if the dispute involves the Chairman) shall first endeavour through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them to resolve the matter to the reasonable satisfaction of both parties.

10.5 Failing resolution under 10.4 above then the Board or the Council, as appropriate, shall, at its next formal meeting, approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

10.6 The Trust Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

10.7 The Chairman or Deputy Chairman (if the dispute involves the Chairman) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.4 above shall be repeated.

10.8 If, in the opinion of the Chairman or Deputy Chairman (if the dispute involves the Chairman), and following the further discussions prescribed in 10.7, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly.

10.9 On the satisfactory completion of this disputes process the Board shall implement agreed changes.

10.10 On the unsatisfactory completion of this disputes process the view of the Board shall prevail.

10.11 Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its Authorisation.

11. Notification of Monitor and Council of Governors:

The Board shall notify Monitor and the Council of Governors of any major changes in the circumstances of the Trust which have made or could lead to a substantial change to its financial wellbeing, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of its authorisation.

12. Board Performance

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

13. Changes to Board Standing Orders

For sake of clarity future amendments to these Standing Orders and Schedules by the Board are not to be regarded as a change to the Trust's Constitution unless such amendments have, or potentially have, a significant and material impact on the integrity of the Trust's Internal Control and Assurance arrangements and its risk profile.

Annex 8 – Further Provisions in Relations to Members

Disqualification from membership

1. A person may not become a member of the Trust if within the last five years:
 - (a) he has received a Red Card under the Trust's Procedure for Care of Patients who are violent or abusive; or
 - (b) he has been involved in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's employees, or registered volunteers.
2. A person may not become a member of the Trust unless he is age 7 or above.
3. A person may not become or remain a member of the Public Constituency if they are eligible to become a member of the Staff Constituency.
4. A person may not be a member of more than one constituency.
5. Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member it shall give the member 14 days written notice to show cause why his name should not be removed from the register of members. On receipt of any such information supplied by the member, the Registrar may, if he considers it appropriate, remove the member from the register of members. In the event of any dispute the Registrar shall refer the matter to the Council of Governors to determine.
6. All members of the Trust shall be under a duty to notify the Registrar of any change in their particulars which may affect their entitlement as a member.

7. Termination of membership

A member shall cease to be a member if:

- 7.1 he resigns on notice to the Secretary
- 7.2 he ceases to be entitled under this Constitution to be a Member of any of the Constituencies;
- 7.3 he is expelled under this Constitution; or
- 7.4 if it appears to the Secretary that he no longer wishes to be a Member and after enquiries made in accordance with a process approved by the Council of Governors, he fails to confirm that he wishes to continue to be a Member of the Trust.

8. Expulsion

A member may be expelled by a resolution of the Council of Governors. The following procedure is to be adopted:

- 8.1 Any member may complain to the Registrar that another member has acted in a way detrimental to the interests of the Trust.
- 8.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either
 - (a) dismiss the complaint and take no further action; or
 - (b) arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

- 8.3** If a 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.
- 8.4** At the Meeting, the Council of Governors will consider any oral and written evidence produced in support of the complaint and any oral and written evidence submitted for or on behalf of the Member about whom complaint has been made.
- 8.5** If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 8.6** A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 8.7** No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council.

9. Voting at Public Governor Elections

- 9.1** A person may not vote at a public election for an elected governor unless within the specified period he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the constituency for which the election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.