

Council of Governors

SUMMARY REPORT

Meeting Date: 22 June 2023

Agenda Item: 13

Report Title:	Recommended changes to the Constitution	
Author(s):	Deborah Lawrenson, Director of Corporate Governance	
Accountable Director:	Deborah Lawrenson, and Sharon Mays, Chair	
Other Meetings presented to or previously agreed at:	Committee/Group:	Council of Governors Board of Directors Nominations and Remuneration Committee
	Date:	19 April 2023 (Council of Governors) 26 April 2023 (Board of Directors workshop) 14 June 2023 (Nominations and Remuneration Committee)
Key Points recommendations to or previously agreed at:	<p>The Council of Governors and the Board of Directors have previously received presentations outlining, at a summary level, changes required to the Constitution as a result of changes to the Health and Social Care Act and the Code of Governance as well as other changes proposed for consideration in respect of the make up of the Board of Directors and composition of the Council of Governors.</p> <p>As agreed at the Council of Governors any further changes to the composition of the Council of Governors, if required, will take place at a later stage following the election process currently underway and work we have planned in September to discuss the role of the governors and engagement and which will result in an updated Membership Engagement Strategy.</p> <p>The Nomination and Remuneration Committee have reviewed and agreed with elements which sit within its remit but asked that discussion take place on the percentage or quantum of Governors required to be present and voting in respect of re-appointment or termination of a Non-Executive Director.</p>	

Summary of key points in report

Attached at **appendix 1** is the Constitution showing all proposed changes for agreement in advance of endorsement at the Board of Directors on 28 June 2023 and final approval at the Annual Members Meeting in September 2023.

The document has been updated to reflect requirements as a result of amendments to the 2006 Health and Social Care Act and to the Code of Governance, changes already discussed at the Council of Governors and Board of Directors, and tidying up where required. It has been subject to external legal review by Capsticks.

The Nominations and Remuneration committee which met in June 2023 discussed and approved for onward reporting to the Council of Governors changes required to the Constitution which relate to their remit in respect of the make-up of the board and associated elements as follows:

- Section 23 – Board of Directors Composition
- Section 27 – Board of Directors – Appointment of Chair and Non-Executive Directors
- Section 35 – Board of Directors Conflicts of Interest of Directors
- Annex 7, Section 10.4 – Standing orders Council of Governors references 60% of Governors present and voting being about to approve re-appointment of an existing Governor

In discussing section 10.4 of Annex 7 it was noted section 26.2 references a requirement for 3/4 of the Council of Governors present and voting to remove a Non-Executive Director with Annex 6 additional provisions – referencing 2/3 of Governors present and voting to terminate an individual Governor in their role. The Nomination and Remuneration committee have recommended this be discussed by the Council of Governors and that the figure used should be the same for both re-appointment and termination in roles with the quantum or percentage agreed by the Council of Governors.

The proposed changes to the composition of the Council of Governors relate to removal of the CCG role, movement of the Staff Side Forum to take this out of the partnership grouping and a suggestion we may look at reducing the number of Sheffield City Council members which is currently 3 with 2 in post. We are awaiting a response from the City Council on this.

Recommendation for the Board/Committee to consider:

Consider for Action		Approval	✓	Assurance	✓	Information	
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The Council of Governors is asked to:

- Agree to changes recommended to the Constitution for onward reporting to the Board of Directors for endorsement prior to final approval at the Annual Members Meeting in September 2023.

Please identify which strategic priorities will be impacted by this report:

Recover Services and Improve Efficiency	Yes	✓	No
Continuous Quality Improvement	Yes	✓	No
Transformation – Changing things that will make a difference	Yes	✓	No
Partnerships – working together to make a bigger impact	Yes	✓	No

Is this report relevant to compliance with any key standards ? State specific standard

Care Quality Commission	Yes	✓	No	Health and Social Care Act 2022
IG Governance Toolkit	Yes		No	Code of Governance 2022

Have these areas been considered ? YES/NO					If Yes, what are the implications or the impact? If no, please explain why
Service User and Carer Safety, Engagement and Experience	Yes		No	✓	Not required for this purpose
Financial (revenue & capital)	Yes		No	✓	
OD/Workforce	Yes		No	✓	
Equality, Diversity & Inclusion	Yes		No	✓	
Legal	Yes		No	✓	
Environmental sustainability	Yes		No	✓	

CONSTITUTION OF

SHEFFIELD HEALTH AND SOCIAL CARE NHS FOUNDATION TRUST

Amended to reflect the changes to the NHS England Code Of Governance for NHS Provider Trusts (October 2022), effective from 1 April 2023 and the Health and Social Care Act 2022

CONSTITUTION

June 2023-December-2019

Date tbc

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1. INTERPRETATIONS AND DEFINITIONS

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health & Social Care Act 2012 and the Health and Social Care Act 2022.

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

References in this Constitution to legislation include all amendments, replacements or re-enactments made and references to paragraph numbers are references to paragraphs of this constitution unless the context provides otherwise.

References to legislation include all regulations, statutory guidance or directions.

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

If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law then the provisions of this Constitution shall prevail unless the law requires otherwise.

References to paragraphs are to paragraphs in this Constitution.

All Annexes referred to in this Constitution form part of it.

In this Constitution:

"2006 Act"	means the National Health Service Act 2006;
"2012 Act"	m Means the Health & Social Care Act 2012;
<u>"2022 Act"</u>	<u>means the Health and Social Care Act 2022;</u>
"Accounting Officer"	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
"Annual Members' Meeting"	means the annual meeting of all the Members;
"Applicant NHS Trust"	means Sheffield Care Trust, an NHS Trust designated as a Care Trust by the Secretary of State for Health under Section 77 of the 2006 Act; as at the time of the Trust's authorisation superceded by Sheffield Health and Social Care NHS Foundation Trusts authorisation.
"Appointed Governors"	means <u>governors from bodies invited to participate in the Council of Governors Sheffield Clinical Commissioning Group Governor, the Local Authority Governors, and the Partnership Governors;</u>
"Area of the Trust"	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
"Board of Directors" or "Board"	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 19 of the Constitution and "Board" shall be construed accordingly;
"Carer"	means an individual who provides care to a Service User and who has attended any of the Trust's services within the period of five years immediately before the date of that individual's application to become a Member of the Service Users and Carers Constituency, other than an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation;

“Chair”	means the Chair of the Trust appointed in accordance with paragraph 26 and 27 of this Constitution;
“Chief Executive”	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with paragraph 29 and 30 of this Constitution;
“Class”	means a class of Members of a Constituency as defined, constituted or identified in accordance with this Constitution;
“Clinical Commissioning Group Governor”	means the Sheffield Clinical Commissioning Group governor specified in Annex 4;
“Clinical Commissioning Group”	means the Clinical Commissioning Group specified in Annex 4;
“Company Secretary”	means the company secretary (<u>trust board secretary</u>) of the Trust jointly appointed or removed by the Chair and the Chief Executive to provide the duties of a company secretary as set out in Annex 8 of this Constitution;
“Constituencies”	means the Public Constituencies, the Staff Constituency and the Service Users and Carers' Constituency;
“Constitution”	means this Constitution of Sheffield Health and Social Care NHS Foundation Trust and all annexes to it;
“Council of Governors”	means the Council of Governors of the Trust as constituted in accordance with this Constitution <u>and as referenced in the 2006 Act</u> and which has the same meaning as the “Board of Governors” in the 202206 Act;
“Director”	means a director on the Board of Directors;
“Elected Governor”	means a Public Governor, Staff Governor and Service Users and Carers' Governor respectively;
“Election Scheme”	means the election scheme and rules set out in Annex 5 and which are to be used in connection with the election of the Elected Governors;
“Executive Director”	means an Executive Director of the Trust;
“Finance Director”	means the person who from time to time is appointed by the Trust to discharge the usual functions of its Chief Finance Officer;
“Financial Year”	means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and (b) each successive period of twelve months beginning with 1st April;
“Governor”	means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;
“Health Service Body”	means as set out in s.9 (4) of the 2006 Act as amended. a NHS Foundation Trust, a Strategic Health Authority, a Special Health Authority, a former Health Authority, an NHS Trust, an Integrated

	another body named as a health service body in Section 9(4) of the 2006 Act;
"Initial Elections"	means the first elections held by the Trust pursuant to this Constitution which shall for the avoidance of doubt include any election held pursuant to those powers contained in Section 33 (4) of the 2006 Act;
"Independent Regulator" or "Monitor"	Is the body corporate known as Monitor, now known as NHS Improvement, as provided by Section 61 of the 2012 Act.
"Initial Elected Governors"	mean those Elected Governors who are elected as Governors at the Initial Elections;
"Integrated Care Board"	"Integrated Care Board" (ICB's) are statutory organisations that have the function of arranging for the provision of services for the purposes of the health service in England as defined in the 2006 Act as amended, bring NHS and care organisations together locally to improve population health and establish shared strategic priorities within the NHS
"Integrated Care Partnership" to	"Integrated Care Partnership" (ICP) is a statutory committee formal partnership of an ICB and each local authority whose area coincides with that of the ICB whose function is to develop an Integrated Health and Care Strategy, organisations (commissioners and providers) working together to improve the
"Integrated Care System"	Integrated Care System" (ICS) is a statutory partnership of organisations who plan, commission, and provide health and care services in their geographical area. The organisations involved include the NHS, local authorities, voluntary and charity groups, and independent care providers.
"Local Authority Governor"	means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 4;
"Local Authority"	means the Council specified in Annex 4, which is a Council for an area which includes the whole or part of the Area of the Trust;
"Member"	means a member of the Trust as determined in accordance with paragraph 1 and Annex 9 of this Constitution;
"Members' Meetings"	means a meeting of the Members;
"Membership"	means membership of the Trust through being a Member of one of its Constituencies;
"Model Election Rules"	means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 5;
"Monitor" "NHS England"	means the body corporate known as Monitor or NHS Improvement, as provided by Section 61 of the 2012 Act. The Health and Care Act 2022 has merged "Monitor" and the Trust Development Authority (TDA) into NHS England and removed legal barriers to collaboration and integrated care, making it easier for providers to take on greater responsibility for service planning and putting Integrated care Systems (ICs) on a statutory footing. means the body corporate established under section 1H of the 2006 Act which has the function of arranging for the provision of services for the purposes of the

"NHS Foundation Trust Code of Governance"	means the Code of Governance for NHS Provider Trusts published NHS England which came into effect on 1 April 2023 by the Independent Regulator on the 29 September 2006 or such similar or further guidance as the Independent Regulator NHS England may publish from time to time;
"Nominations and Remunerations Committee"	means the nominations and remunerations committee established by the Council of Governors in accordance with Annex 7, paragraph 10;
"Non-Executive Director"	means a Non-Executive Director of the Trust;
"Partnership Governor"	means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 4;
"Partnership Organisation"	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 4;
"Public Constituencies"	means a public constituency of the Trust as defined in Annex 1;
"Public Governor"	means a Member of the Council of Governors elected by the Members of a Public Constituency;

“Reserve Chair”	means the person appointed in accordance with paragraph 14.3 to preside at meetings of the Council of Governors in the circumstances set out in paragraph 14.1;
“Service Users' and Carers Constituency”	means that part of the Trust's membership which consists of Service Users and Carers' referred to in the 2006 Act as the patients' constituency;
“Service Users' and Carers Classes”	means the Classes of the Service Users and Carers' Constituency as specified in Annex 3;
“Service Users and Carers' Governor”	means a member of the Council of Governors elected by the Members of the Service Users and Carers; Constituency;
“Service Users”	an individual who has attended any of the Trust's services as a patient within the period of five years immediately before the date of that individual's application to become a Member of the Trust;
“Social Care Functions”	means such of those health related functions, referred to in Regulation 6 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 as amended;
“Sheffield Clinical Commissioning Group Governor”	means a member of the Council of Governors appointed in accordance with the provisions of this Constitution by a Clinical Commissioning Group specified in Annex 4;
“Staff Classes”	means the Classes of the Staff Constituency as specified in Annex 2;
“Staff Constituency”	means that part of the Trust's membership consisting of the staff of the Trust and other persons as more particularly provided for in paragraph 7 of this Constitution and which is divided into the Staff Classes as specified in Annex 2;
“Staff Governor”	means a member of the Council of Governors elected by a Staff Class;
“Terms of Authorisation”	means the terms of the Trust's Authorisation issued by the Independent Regulator NHS England under Section 35 of the 2006 Act as amended ;
“The Trust”	means Sheffield Health and Social Care NHS Foundation Trust;
“Vice Chair”	means the Vice Chair of the Trust;
“Voluntary Organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit.

2. NAME

- 2.1 The name of the foundation trust ~~shall be~~ Sheffield Health and Social Care NHS Foundation Trust (the “Trust”).

3. PRINCIPAL PURPOSE

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to:
- 3.3.1 The provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- 3.3.2 The promotion and protection of public health.
- 3.4 Without prejudice to the Trust’s principle purpose, the further purpose of the Trust shall be to provide goods and services for purposes related to the provision of healthcare in accordance with its statutory powers and duties, and its Terms of Authorisation.
- 3.5 For the purposes of this Constitution “the provision of goods and services for the purposes related to the provision of healthcare” includes the provision of social care services.
- 3.6 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.
- 3.7 The Trust may carry out research in connection with the provision of healthcare and make facilities and staff available for the purposes of education, training or research carried out by others.

4. POWERS

- 4.1 The powers of the Trust are set out in the 2006 Act as amended, subject to any restrictions in the Terms of Authorisation.
- 4.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.4 In accordance with section 65Z5 of the 2006 Act the Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the following—
- (a) a relevant body as defined under section 65Z5(2) of the 2006 Act;
- (b) a local authority (within the meaning of section 2B of the 2006 Act);
- (c) a combined authority.
- 4.5 Where the Trust arranges for any functions exercisable by it to be exercised jointly the bodies by whom the function is exercisable jointly may—
- (a) arrange for the function to be exercised by a joint committee of theirs;
- (b) arrange for one or more of the bodies, or a joint committee of the bodies, to establish and maintain a pooled fund.

5. MEMBERSHIP OF CONSTITUENCIES

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

5.1.1 a Public Constituency;

5.1.2 a Staff Constituency; and

5.1.3 a Service User and Carers' Constituency.

6. APPLICATION FOR MEMBERSHIP

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, save as provided for in paragraph 10.
- 6.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 9.

7. PUBLIC CONSTITUENCY

- 7.1 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.
- 7.2 Those individuals who live in an area specified as an area for any Public Constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of Members in each area for a Public Constituency is specified in Annex 1.
- 7.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 9.

8. STAFF CONSTITUENCY

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
 - 8.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 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, including (but not limited to):
 - 8.2.1 contractors or the staff of contractors who work full time at the Trust providing services to the Trust and/or who can demonstrate that a significant part of their work is to provide services to the Trust, and are acknowledged in writing by the Trust as so doing of the purposes of this paragraph;
 - 8.2.2 staff employed by the Local Authority who are deployed to work with the Trust to provide relevant Social Care Functions;
 - 8.2.3 academic staff under an honorary contract with the Trust to provide patient care and/or services to the Trust and who are acknowledged in writing by the Trust as being under such contract for the purpose of this paragraph.
- 8.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this paragraph 7 are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into eight 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 Staff Class within the Staff Constituency.
- 8.5 The minimum number of members in each Staff Class of the Staff Constituency is specified in Annex 2

Automatic Membership by Default – Staff

- 8.6 An individual who is:
- 8.6.1 eligible to become a Member of the Staff Constituency, and
 - 8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate Staff Class within the Staff Constituency,
- shall become a Member of the Trust as a member of the Staff Constituency and appropriate Staff Class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.
- 8.7 The process by which an individual shall be invited to become a member of the Staff Constituency shall be in accordance with the provisions of Annex 9.

9. SERVICE USERS AND CARERS' CONSTITUENCY

- 9.1 An individual:
- 9.1.1 whose name is recorded as a service user in the Trust's patient administration system or other record maintained by the Trust for the purpose of identifying service users' of the Trust, and who has within the period specified below, attended a Trust member of staff as a service user; or
 - 9.1.2 who has within the period specified below attended the Trust as a carer of a service user,
- may become or continue as a Member of the Trust.
- 9.2 The period referred to above in paragraph 8.1 shall be the period of 5 years immediately preceding the date of an application by the Service User or Carer to become a Member of the Trust.
- 9.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions are referred to collectively as the Service Users and Carers' Constituency.
- 9.4 The Service Users and Carers' Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Service Users and Carers' Constituency, each description of individuals being specified in Annex 3 and being referred to as a Class within the Service Users and Carers' Constituency.
- 9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a Voluntary Organisation, or as a volunteer for Voluntary Organisation, does not come within the category of those who qualify for Members of the Service Users and Carers' Constituency.
- 9.6 The minimum number of Members in each Class of the Service Users and Carers' Constituency is specified in Annex 3.
- 9.7 Where an individual is eligible for admission to both the Public Constituency and the Service Users' and Carers Constituency the individual may specify which Constituency they wish to belong to either in the individual's application or subsequently in writing (but once such a specification has been made, the individual shall not be entitled to subsequently change Constituencies, unless the individual shall cease to be entitled to be a Member of the Constituency of which the individual has chosen to be a Member).
- 9.8 If such an individual does not specify in accordance with paragraph 8.7 above, or the specification is unclear, the individual will be allocated to the Public Constituency, until such time as the individual shall make a clear specification.
- 9.9 Where an individual is eligible for admission to more than one Class in the Service Users and Carers' Constituency the individual may select to which they wish to belong to in

either the individual's application or subsequently in writing but once the individual has made such a specification, that person shall not be entitled to subsequently change Classes unless the individual ceases to be a member of the Class selected.

- 9.10 If such an individual does not specify in accordance with paragraph 8.9 above, or the specification is unclear, the individual will be allocated to such class as the Company Secretary shall decide as a matter of the individual's absolute discretion until such time as the individual makes a clear specification.

10. RESTRICTION ON MEMBERSHIP

- 10.1 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.
- 10.2 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.
- 10.3 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 9 – Further Provisions.

11. ANNUAL MEMBERS MEETING

- 11.1 The Trust shall hold an annual meeting of its members (Annual Members Meeting). The Annual Members Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members Meeting are set out in Annex 9.

12. COUNCIL OF GOVERNORS - COMPOSITION

- 12.1 The Trust shall have a Council of Governors, which shall comprise both Elected and Appointed Governors.
- 12.2 The composition of the Council of Governors shall be as specified in Annex 4.
- 12.3 The Members of the Council of Governors, other than the Appointed Governors shall be chosen by election by their constituency or, where there are Classes within a constituency, by their Class within that constituency.
- 12.4 The number of Governors to be elected by each Constituency, or, where appropriate, by each Class of each Constituency, is specified in Annex 4.

13. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 13.1 Elections for elected Members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 13.2 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 5.
- 13.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 45 of the constitution.
- 13.4 An election, if contested, shall be by secret ballot.

14. COUNCIL OF GOVERNORS - TENURE

- 14.1 Subject to the transitional provisions contained at paragraph 2 of Annex 6 in relation to the Initial Elected Governors, an Elected Governor shall hold office for a period of 3 years with re-election possible and shall be eligible for re-election up to a maximum of 9 years.

- 14.2 An Elected Governor shall cease to hold office if they cease to be a Member of the constituency or Class by which they were elected.
- 14.3 An Elected Governor shall be eligible for re-election at the end of their term, subject to the provisions of paragraph 1 of Annex 6.
- 14.4 An Appointed Governor shall hold office for a period of three years, subject to the provisions of paragraph 1 of Annex 6 and shall be eligible for re-appointment up to a maximum of 9 years.
- 14.5 Further provisions relating to a Governor's tenure of office are set out in Annex 6.

15. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 15.1 The following may not become or continue as a member of the Council of Governors:
 - 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 15.1.2 a person who has made a composition or arrangement with, or granted a trust deed for their creditors and has not been discharged in respect of it;
 - 15.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 15.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or may be removed as a member of the Council of Governors are set out in Annex 6.

16. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 16.1 The general duties of the Council of Governors are:-
 - 16.1.1 To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and
 - 16.1.2 To represent the interests of the members of the Trust as a whole and the interests of the public.

~~16.1.2~~

16.2 Whilst the general statutory duties are unchanged, the Council of Governors through the revised Code has a role to represent the interests of the wider public and to be assured the Board is collaborating to support the system in its decision making – see section 46 for detail on significant transaction requirements.

~~16.2~~

- 16.3 The Trust must take steps to ~~secure-ensure~~ that the Governors are equipped with the skills and knowledge they require in their capacity as such to undertake the role.

17. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 17.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26 or paragraph 27 below) or, in their absence the Vice Chair appointed in accordance with the provisions of paragraph 28 below, shall preside at meetings of the Council of Governors save that if the Chair and Vice-Chair are unable to preside whether for reasons of absence, conflict of interest or otherwise the Reserve Chair shall preside.
- 17.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting on the grounds more particularly provided for in Annex 6.

- 17.3 The Reserve Chair shall be a Public Governor or Service User and Carer Governor and shall be appointed by the Council of Governors in general meeting. The provisions of paragraph 2.8 to 2.9 of Annex 7 shall also apply.

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

18. COUNCIL OF GOVERNORS – STANDING ORDERS

18.1 The standing orders for the practice and procedure of the Council of Governors as may be varied from time to time, are at Annex 7

19. COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

19.1 In this paragraph, the Panel means a panel of persons appointed by ~~the Independent Regulator~~[NHS England](#) to which a governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:

19.1.1 to act in accordance with its constitution; or

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

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

20. COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS

20.1 If a Governor has a financial, non-financial professional, non-financial personal or indirect 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 Governors shall disclose that interest to the members of the Council of Governors as soon as they become aware of it.

20.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

21. COUNCIL OF GOVERNORS – TRAVEL EXPENSES

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

22. COUNCIL OF GOVERNORS – FURTHER PROVISIONS

22.1 The Council of Governors may appoint a Nominations and Remuneration Committee consisting of all or some of its members to assist in carrying out those functions set out in paragraphs 21 and 29.1 of the Constitution their recommendations should be reported back to the Council of Governors; and

22.2 Further provisions with respect to the Council of Governors are set out in Annex 6.

23. BOARD OF DIRECTORS - COMPOSITION

23.1 The Trust shall have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

23.2 The Board of Directors shall comprise:

23.2.1 a non-executive Chair;

23.2.2 ~~up to five~~ other Non-Executive Directors; and

23.2.3 ~~up to five~~ Executive Directors,

- 23.3 One of the Executive Directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the Executive Directors shall be the Finance Director.
- 23.6 One of the Executive Directors shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

~~23.8~~ The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors (excluding the Chair) equals or exceeds the number of Executive Directors. ~~23.8~~

24. BOARD OF DIRECTORS – GENERAL DUTY

~~24.1~~ The general duties of the Board of Directors and of each Director individually, are to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

~~24.2~~ In making a decision about the exercise of its functions, an NHS foundation trust must have regard to all likely effects of the decision in relation to—

~~(a) the health and well-being of the people of England;~~

~~(b) the quality of services provided to individuals—~~

~~(i) by relevant bodies, or~~

~~(ii) in pursuance of arrangements made by relevant bodies,~~

~~for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;~~

~~(c) efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.~~

~~The board of directors should develop, embody and articulate a clear vision and values for the trust, with reference to the ICP's integrated care strategy and the trust's role within system and place-based partnerships, working with the Integrated Care Board and through provider collaboratives.~~

~~24.124.3~~ The board of directors should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business Trust are aligned with the trust's vision, values and strategy, it should seek assurance that management has taken corrective action.

25. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR INCLUDING ASSOCIATE NON-EXECUTIVE DIRECTORS

A person may be appointed as a Non-Executive Director or an Associate Non-Executive Director only if:

25.1 they are a Member of the Public Constituency, or

25.2 they are a Member of the Service Users, and Carers' Constituency, and

25.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university

25.4 they are not disqualified by virtue of paragraph 31 below.

26. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.

26.2 The removal of the Chair or any other Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

~~26.3 The initial Chair and the initial Non-Executive Directors shall be appointed in accordance with paragraph 27 below.~~

~~27. **BOARD OF DIRECTORS – APPOINTMENT OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS**~~

~~27.1 The Council of Governors shall appoint the Chair of the Applicant NHS Trust as the initial Chair of the Trust if they wish to be appointed.~~

~~27.2 The power of the Council of Governors to appoint the other Non-Executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the Non-Executive Directors of the Applicant NHS Trust (other than the Chair) who wish to be appointed.~~

~~27.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 25 above (other than disqualification by virtue of paragraph 29 below) do not apply to the appointment of the initial Chair and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph.~~

~~27.4~~ 26.4 An individual appointed ~~as the initial Chair or as an initial~~ as a Non-Executive Director who has served an initial term and is then appointed Chair can serve up to 6 years (9 in total for both roles) without the Trust having to seek approval from NHS England in accordance with the provisions of this paragraph shall be appointed for the unexpired period of their term of office as Chair or (as the case may be) Non-Executive Director of the Applicant NHS Trust; but if, on appointment, that period is less than 12 months, they shall be appointed for 12 months.

28. BOARD OF DIRECTORS – APPOINTMENT OF VICE-DEPUTY CHAIR

28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice-Deputy Chair.

29. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS AND OF ASSOCIATE NON-EXECUTIVE DIRECTORS

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

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

29.3 The initial Chief Executive is to be appointed in accordance with paragraph 30 below.

~~29.4~~ 29.4 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

~~29.4~~ 29.5 The Board of Directors hold responsibility for the appointment and removal of Associate Non-Executive directors.

~~30. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF INITIAL CHIEF EXECUTIVE~~

~~30.1~~ The chief Officer of the Applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust if they wish to be appointed.

~~30.2~~ The appointment of the chief Officer of the Applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

~~31.~~ 30. BOARD OF DIRECTORS - DISQUALIFICATION

~~31.1~~ 30.1 The following may not become or continue as a member of the Board of Directors either as voting or non-voting directors including Associate Non-Executive directors:

~~31.1.1~~ 30.1.1 a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;

~~31.1.2~~ 30.1.2 a person who has made a composition or arrangement with, or granted a trust deed for their creditors and has not been discharged in respect of it;

~~31.1.3~~ 30.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them;

~~31.1.4~~ 30.1.4 a person who falls within the further grounds for disqualification set out in Annex 9.

~~32.~~ 31. BOARD OF DIRECTORS – MEETINGS

~~32.1~~ 31.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

~~32.2~~ 31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

33.32. BOARD OF DIRECTORS – STANDING ORDERS

33.432.1 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 8.

34.33. BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS

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

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

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

34.233.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if:

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

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

34.333.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

34.433.4 In sub-paragraph 34.1.2 “third party” means a person other than:

34.4.433.4.1 The Trust, or

34.4.233.4.2 A person acting on its behalf.

34.533.5 If a Director has a financial, non-financial professional, non-financial personal or indirect 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, the Director shall disclose that interest to the members of the Board of Directors as soon as they become aware of it.

34.633.6 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. .

34.733.7 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.

34.833.8 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

34.933.9 This paragraph does not require a declaration or an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

34.1033.10 A director need not declare an interest:

34.10.433.10.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

34.10.233.10.2 If, or to the extent that, the directors are already aware of it;

34.10.333.10.3 If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered:

- (a) By a meeting of the Board of Directors, or
- (b) By a committee of the directors appointed for the purpose under the constitution.

35.34. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

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

35.134.2 Non-Executive directors will serve 3-year terms up to a maximum of 9 years in total, at the discretion of the Council of Governors. Agreement beyond this would be for exceptional reasons only.

34.3 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.

35.234.4 Associate Non-Executive directors appointed by the Board of Directors will generally serve 3 year terms of office up to a maximum of 9 years in total.

36.35. REGISTERS

36.135.1 The Trust shall have:

36.1.135.1.1 a register of members showing, in respect of each Member, the constituency to which they belong and, where there are Classes within it, the Class to which they belong;

36.1.235.1.2 a register of members of the Council of Governors;

36.1.335.1.3 a register of interests of Governors;

36.1.435.1.4 a register of Directors; and

36.1.535.1.5 a register of interests of the Directors.

36.235.2 The process of admission to and removal from the registers shall be as set out in Annex 9.

37.36. REGISTERS – INSPECTION AND COPIES

37.136.1 The Trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

37.236.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

37.2.136.2.1 any member of the Service Users and Carers' Constituency; and

37.2.236.2.2 any other member of the Trust, if they so requests.

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

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

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

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

38.37. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

~~38.137.1~~ The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

~~38.1.4~~37.1.1 a copy of the current Constitution;

~~38.1.2~~37.1.2 a copy of the current Terms of Authorisation;

~~38.1.3~~37.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

~~38.1.4~~37.1.4 a copy of the latest annual report;

~~38.1.5~~37.1.5 a copy of the latest information as to its forward planning; and

~~38.1.6~~37.1.6 a copy of any notice given under section 52 of the 2006 Act.

~~38.2~~37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

~~38.2.1~~37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.

~~38.2.2~~37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

~~38.2.3~~37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

~~38.2.4~~37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

~~38.2.5~~37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

~~38.2.6~~37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (~~Monitor's~~ [SNHS England's](#) decision), 65KB (Secretary of State's response to ~~Monitor's~~ [NHS England's](#) decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re- submitted final report) of the 2006 Act.

~~38.2.7~~37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

~~38.2.8~~37.2.8 a copy of any final report published under section 65I (administrator's final report).

~~38.2.9~~37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

~~38.2.10~~37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

~~38.3~~37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

~~38.4~~37.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

~~39.38.~~ **AUDITOR**

~~39.1~~38.1 The Trust shall have an auditor.

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

40.39. AUDIT COMMITTEE

40.139.1 The Trust shall establish a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

41.40. ACCOUNTS

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

41.240.2 The Independent Regulator may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

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

41.440.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.

41.540.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

42.141.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.

42.241.2 The Trust shall give information as to its forward planning in respect of each Financial Year to the Independent Regulator.

42.341.3 The document containing the information with respect to forward planning referred to above shall be prepared by the Directors.

42.441.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

42.541.5 Each forward plan must include information about:

42.5.141.5.1 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

42.5.241.5.2 the income it expects to receive from doing so.

42.641.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must:

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

42.6.241.6.2 notify the directors of the Trust and its determination.

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

41.8 In deciding whether to approve any such proposal the Governors shall consider to determine together whether the trust's non-NHS work will significantly interfere with the trust's principal purpose, which is to provide goods and services for the health service in England, or its ability to perform its other functions.

43.42. MEETING OF COUNCIL OF GOVERNORS TO CONSIDER ANNUAL ACCOUNTS AND REPORTS

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

43.1.142.1.1 the annual accounts;

43.1.242.1.2 any report of the auditor on them;

43.1.342.1.3 the annual report.

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

43.342.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

44.43. INSTRUMENTS

44.143.1 The Trust shall have a seal.

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

45.44. AMENDMENT OF THE CONSTITUTION

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

45.1.144.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and

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

45.244.2 Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

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

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

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

45.444.4 If more than half of the members voting approve the amendment, the amendment continues to have effect, otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

45.544.5 Amendments by the Trust of its constitution are to be notified to the Independent Regulator. For the avoidance of doubt, the Independent Regulator's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Section 7 of the 2006 Act.

46.45. MERGERS, ETC., AND SIGNIFICANT TRANSACTIONS

46.145.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

46.245.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

46.345.3 The constitution does not contain any descriptions of the term “significant transaction” for the purposes of Section 51A of the 2006 Act.

CORE CONSTITUTION

ANNEX 1
The Public Constituency

THE PUBLIC CONSTITUENCY

Table 1

Name of the Public Constituency	Area of the Public Constituency (as defined by electoral wards)	Minimum number of Members	Number of Governors to be elected
Sheffield North East	West Ecclesfield, East Ecclesfield, Southey, Firth Park, Burngreave, and Shiregreen and Brightside	150	2
Sheffield North West	Stocksbridge and Upper Don, Stannington, Hillsborough, Walkley, Broomhill and Central	150	2
Sheffield South East	Darnall, Manor Castle, Arbourthorne, Richmond, Birley, Mosborough, Beighton and Woodhouse	150	2
Sheffield South West	Gleadless Valley, Dore and Totley, Fulwood, Graves Park, Nether Edge, Ecclesall, Beauchief and Greenhill, and Crookes	150	2
Outside Sheffield	All wards in England	100	1

CORE CONSTITUTION

ANNEX 2

The Staff Constituency

THE STAFF CONSTITUENCY

Table 1

Classes within the Staff Constituency	Individuals eligible for Membership of that Class	Minimum number of Members	Number of Governors to be elected
Nursing Staff Class	Those individuals defined in paragraph 1 below	300	1
Medical and Clinical Staff Class	Those individuals defined in paragraph 2 below	80	1
Social Worker Staff Class	Those individuals defined in paragraph 3 below	2010	1
Allied Health Professions Staff Class	Those individuals defined in paragraph 4 below	50	1
Psychology Staff Class	Those individuals defined in paragraph 5 below	40	1
Support Workers Staff Class	Those individuals defined in paragraph 6 below	500	1
Clinical Support Staff Class	Those individuals defined in paragraph 7 below	300	1
Central Support Staff Class	Those individuals defined in paragraph 8 below	200	1

1. NURSING STAFF CLASS

1.1 The members of the Nursing Staff Class are those individuals who are Members of the Staff Constituency who:

- 1.1.1 are registered with the Nursing and Midwifery Council and who are otherwise fully authorised and licensed to practice in England and Wales or as otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying out the profession of registered nurse; and
- 1.1.2 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

2. MEDICAL AND CLINICAL STAFF CLASS

- 2.1 The Members of the Medical and Clinical Staff Class are individuals who are Members of the Staff Constituency who:
- 2.1.1 are fully registered persons within the meaning of the consolidated Medical Act 1983 and the Dentists Act 1984 (as the case may be) who are otherwise fully authorised and licensed to practice in England and Wales; or
 - 2.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; or
 - 2.1.3 who are qualified pharmacists; and
- who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

3. SOCIAL WORKER STAFF CLASS

- 3.1 The Members of the Social Worker Staff Class are individuals who are Members of the Staff Constituency who:
- 3.1.1 are qualified social workers registered with the General Social Care Council and employed or engaged by their employing authority and deployed to work with the Trust to provide relevant social care; or
 - 3.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and
 - 3.1.3 are designated by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain designated by the Trust in that capacity.

4. ALLIED HEALTH PROFESSIONS STAFF CLASS

- 4.1 The Members of the Allied Health Profession's Staff Class are individuals who are Members of the Staff Constituency:
- 4.1.1 whose regulatory body falls within the remit of the Council for the Regulation of Healthcare Professions established by Section 25 of the NHS Reform Healthcare Professions Act 2002 (but excluding Staff who fall within paragraph 1 or 2 above); or
 - 4.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and
 - 4.1.3 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity

5. PSYCHOLOGY STAFF CLASS

- 5.1 The Members of the Psychology Staff Class are individuals who are Members of the Staff Constituency who:
- 5.1.1 are registered with the British Psychological Society and who abide by its Code of Ethics and Conduct and maintain appropriate standards of training and practice; or

- 5.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and
- 5.1.3 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity

6. SUPPORT WORKERS STAFF CLASS

- 6.1 The Members of the Support Workers Staff Class are individuals who are Members of the Staff Constituency who:
 - 6.1.1 do not come within paragraphs 1, 2, 3, 4 or 5 above (due to not being registered with a professional body) but who can demonstrate that a significant part of their work is to provide care to Service Users (e.g. nursing assistants); or
 - 6.1.2 who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph; and
 - 6.1.3 who are employed by the Trust in that capacity at the date of their invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

7. CLINICAL SUPPORT STAFF CLASS

- 7.1 The Members of the Support Staff Class are individuals:
 - 7.1.1 who are members of the Staff Constituency who do not come within paragraphs 1, 2, 3, 4, 5 or 6 above and who work as part of a care team; or
 - 7.1.2 are designated by the Trust from time to time as eligible to be a Member of this Staff Class and who are not eligible to be members of another Staff Class for the purpose of this paragraph having regard to the usual definition applicable at that time; and
 - 7.1.3 who are employed or designated by the Trust at that invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed or designated by the Trust in that capacity.

8. CENTRAL SUPPORT STAFF CLASS

- 8.1 The Members of the Support Central Department Staff Class are individuals who are members of the Staff Constituency who do not come with paragraph 1, 2, 3, 4, 5, 6 or 7 above and are designated by the Trust from time to time as eligible to be a Member of this Staff Class and who are not eligible to be members of another Staff Class for the purpose of this paragraph having regard to the usual definition applicable at that time; and
- 8.2 who are employed or designated by the Trust at that invitation under paragraph 7 of the Constitution to become a Member in accordance with the provisions of Annex 9 and at all times thereafter remain employed or designated by the Trust in that capacity.

9. MINIMUM NUMBERS AND NUMBERS OF GOVERNORS

- 9.1 The minimum number of Members in each Staff Class shall be as set out in column 3 of Table 1 to this Annex and the number of Governors to be elected by each such Staff Class is given in the corresponding entry in Column four of that Table.

10. CONTINUOUS EMPLOYMENT

- 10.1 For the purposes of paragraph 7 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

CORE CONSTITUTION

ANNEX 3

The Service Users and Carers' Constituency

Annex 3
The Service Users and Carers' Constituency

Table 1

Classes within the Service Users and Carers' Constituency	Individuals eligible for Membership of that Class	Minimum number of Members	Number of Governors to be elected
Service User Class	An individual who has attended any of the Trust's services as a patient within the period of five years immediately before the date of that individual's application to become a Member of the Trust.	150	10
Carer Class	An individual who provides care to a Service User and who has attended any of the Trust's services within the period of five years immediately before the date of that individual's application to become a Member of the Service Users and Carers Constituency, other than an individual providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation.	100	4
Young Service User or Carer Class	The above eligibility will apply for Service Users and Carers in addition for this class Service User or Carer between the age of 12 and 35 years old.	20	2

CORE CONSTITUTION

ANNEX 4

Composition of Council of Governors

COMPOSITION OF COUNCIL OF GOVERNORS

1. INTRODUCTION

- 1.1 The Council of Governors shall comprise Governors who are:
- 1.1.1 elected by the respective Constituencies in accordance with the provisions of this Constitution; or
 - 1.1.2 appointed in accordance with paragraph 2 below.
- 1.2 The Council of Governors shall at all times be constituted so that more than half the Council of Governors shall consist of Governors who are elected by Members of the Public Constituency and the Service Users and Carers' Constituency.

2. BODIES ENTITLED TO APPOINT A MEMBER OF THE COUNCIL OF GOVERNORS

- 2.1 The following bodies in this paragraph 2 shall be entitled to appoint a Governor or Governors (as the case may be) to the Council of Governors as provided for in this paragraph 2.

Sheffield Clinical Commissioning Group

- ~~2.2 — Sheffield Clinical Commissioning Group shall be entitled to appoint a Governor in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said Clinical Commissioning Group (CCG) from appointing its Governors provided the appointment is duly made in accordance with the CCG's own internal processes.~~
- ~~2.3 — If the CCG named in paragraph 2.2 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall in its absolute discretion be entitled to extend an invitation to any of those other CCGs to whom it provides goods and services to appoint a Governor in substitution for the CCG which has failed or declined to do so. The Trust shall give notice of that invitation to the Independent Regulator.~~
- ~~2.4 — If the invitation referred to in paragraph 2.3 above is accepted by a CCG, that CCG shall appoint a Governor and any CCG which has previously failed to appoint a Governor shall cease to be entitled to do so, subject to the provisions of paragraph 2.8 below.~~
- ~~2.5 — Subject to paragraph 2.7 below, if the invitation is not accepted within a reasonable period or such period as may have been specified in the invitation the Trust shall extend an invitation to any other such CCG until the invitation, is accepted and a Governor is appointed.~~
- ~~2.6 — The Trust shall give notice forthwith to the Independent Regulator of all invitations the Trust may extend under the preceding paragraph and of any acceptances.~~
- ~~2.7 — Any Governor appointed under paragraphs 2.4 and 2.5 above shall serve on the Council of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit that CCG which had first failed or declined to appoint a Governor to do so for the next period of office or to invite that CCG which had appointed a Governor in substitution to do so.~~
- ~~2.8 — Notwithstanding the foregoing provisions of this paragraph, the Trust shall in its absolute discretion be entitled:~~
- ~~2.8.1 — to give not less than six months' notice to the CCG referred to in paragraph 2.2 above (or any substituted CCG appointed under paragraphs 2.4 and 2.5 above) terminating their right to appoint a Governor and upon the expiration of that notice period or such other date as the Trust and the relevant CCG may agree~~

~~that CCG's right to appoint a Governor shall be terminated and the period of office of the Governor appointed by that CCG shall also come to an end on that date; and~~

~~2.8.2 to appoint another CCG for which the Trust provides goods and services to replace that CCG to which notice has been given under paragraph 2.8 (i) above save that these provisions shall at all times be operated so as to ensure that the number of CCGs entitled to appoint a Governor remains as provided for in paragraph 2.2 above.~~

Qualifying Local Authority

2.92.2 Sheffield City Council shall be entitled to appoint up to three Governors in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said local authority from appointing its Governors.

2.102.3 If the local authority named in paragraph 2.9-2 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall consult each local authority whose area includes the whole or part of the area of the Trust and the Trust in its absolute discretion may extend an invitation to any of those local authorities to appoint a Governor in substitution for the local authority which has failed or declined to do so.

2.112.4 A Governor appointed under paragraph 2.10 shall then serve on the Council of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit that local authority which had failed or declined to appoint a Governor to appoint a Governor for the next period of office (provided it remains eligible to do so) or to invite the local authority which had appointed a Governor in substitution to do so.

Partnership Organisations

2.122.5 The Trust shall nominate those organisations to be designated as Partnership Organisations for the purposes of this Constitution. The organisations so nominated as Partnership Organisations are:

~~2.12.1 Sheffield Health & Social Care Trust Joint Consultation Forum~~

2.12.22.5.1 Sheffield Hallam University

2.12.32.5.2 Sheffield University

2.12.42.5.3 Two other stakeholder organisations to be determined by the Trust

2.12.52.5.4 Sheffield African Caribbean Mental Health Association

2.12.62.5.5 Sheffield Pakistani Muslim Centre

2.132.6 Each of the above organisations shall be entitled to appoint one Governor each in accordance with a process to be agreed by it with the Trust.

~~2.14~~—An organisation appointed as a Partnership Organisation under paragraph 2.13 shall be entitled to appoint one Governor from a date and in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes.

2.7 Governors appointed by Partnership organisations will count alongside Governors appointed by a Qualifying Local Authority for the purpose of determining organisations in the quorum of meetings.

2.8

Staff Consultative Forum

2.8 Sheffield Health & Social Care Trust Joint Consultation Forum shall be entitled to appoint one Governor

3. COMPOSITION OF THE COUNCIL OF GOVERNORS

	Electing/Appointing Body	Number of Governors	Total
1.	Public Constituency		
	1.1 Sheffield North East	2	9
	1.2 Sheffield North West	2	
	1.3 Sheffield South East	2	
	1.4 Sheffield South West	2	
	1.5 Outside Sheffield	1	
2.	Staff Constituency		
	2.1 Nursing Staff Class	1	8
	2.2 Social Worker Staff Class	1	
	2.3 Medical and Clinical Staff Class	1	
	2.4 Allied Health Professions Staff Class	1	
	2.5 Psychology Staff Class	1	
	2.6 Support Worker Class	1	
	2.7 Support Clinical Staff Class	1	
	2.8 Support Central Department Staff Class	1	
3.	Service Users and Carers' Constituency		
	3.1 Service Users Class	10	16
	3.2 Carers Class	4	
	3.3 Young Service User and Carer Class	2	
4.	Appointed Governors		
	4.1 Sheffield Clinical Commissioning Group	4	<u>34</u>
	4.24.1 Sheffield City Council	3	
<u>5.</u>	<u>Staff Consultative Forum</u>	<u>1</u>	<u>1</u>
5.	Further Organisations		
	5.1 Sheffield Health & Social Care Trust Joint Consultative Forum	4	<u>67</u>
	5.25.1 Sheffield Hallam University	1	
	5.35.2 Sheffield University	1	
	5.45.3 Stakeholder organisations	2	
	5.55.4 Sheffield African Caribbean Mental Health Association Social Care	1	
	5.65.5 Sheffield Pakistani Muslim Centre	1	
	Total number of Governors	44	43

Note SCC have been asked to confirm if their governor number should be reduced

4. FURTHER PROVISION

4.1 Further provisions relating to the composition of the Council of Governors is at Annex 6.

CORE CONSTITUTION

ANNEX 5
The Model Rules for Elections

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PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

Description	Meaning
“2006 Act”	the National Health Service Act 2006;
“corporation”	the public benefit corporation subject to this constitution;
“Council of Governors”	the Council of Governors of the corporation;
“declaration of identity”	meaning set out in rule 21.1;
“election”	an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;
“e-voting”	voting using either the internet, telephone or text message;
“e-voting information”	meaning set out in rule 24.2;
“ID declaration form”	meaning set out in Rule 21.1;
“internet voting record”	meaning set out in rule 26.4(d);
“internet voting system”	such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;
“lead governor”	the governor nominated by the corporation to fulfil the role described in Appendix B to The Code of Governance for NHS Provider Trusts Foundation Trust Code of Governance (Monitor, December 2013, the updated Code dated February 2023 October 2022) or any later version of such code;
“list of eligible voters”	the list referred to in rule 22.1, containing the information in rule 22.2;
“method of polling”	a method of casting a vote in a poll, which may be by post, internet, text message or telephone;
“ Monitor NHS England”	the corporate body known as NHS England Monitor (now known as NHS Improvement) as provided by section 61 of the 2012 Act;
“numerical voting code”	meaning set out in rule 57.2(b)
“polling website”	meaning set out in rule 26.1;
“postal voting information”	meaning set out in rule 24.1;
“telephone short code”	a short telephone number used for the purposes of submitting a vote by text message;
“telephone voting facility”	meaning set out in rule 26.2;
“telephone voting record”	meaning set out in rule 26.5 (d);
“text message voting facility”	meaning set out in rule 26.3;
“text voting record”	meaning set out in rule 26.6 (d);
“the telephone voting system”	such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

Description	Meaning
“the text message voting system”	such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;
“voter ID number”.	a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting, “voting information” means postal voting information and/or e- voting information

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

5.1 Subject to rule 62, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

6.1 The corporation is to pay the returning officer:

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
- (b) is to prepare a nomination form for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

- (a) full name,

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

- (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

- (a) they wish to stand as a candidate,
- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

14. Decisions as to the validity of nomination

14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination form is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the Statement.

16. Inspection of statement of nominated candidates and nomination forms

- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
 - (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,

- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held, ("declaration of identity") and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's e-mail address, if this has been provided to which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope,
 - (b) the ID declaration form (if required),
 - (c) information about each candidate standing for election, pursuant to rule 54 of these rules, and
 - (d) a covering envelope;
- ("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required),
 - (b) the voter's voter ID number,
 - (c) information about each candidate standing for election, pursuant to rule 57 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
 - (d) contact details of the returning officer,
- ("e-voting information").

24.3 The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.

24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

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

26. E-voting systems

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

- (b) specify:
 - (i) the name of the corporation,

- (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:
- (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
 - (f) prevent any voter from voting after the close of poll.
- 26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:
- (a) require a voter to
- (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
- (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote and how to make a declaration of identity,
 - (v) the date and time of the close of the poll, and
 - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
- (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

- 26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:
- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
 - (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (ii) the candidate or candidates for whom the voter has voted; and
 - (iii) the date and time of the voter's vote
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
 - (f) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter's identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.

- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

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

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:

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

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

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

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

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

37. Validity of votes

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

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

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

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

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

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

- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

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

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

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

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

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

39. De-duplication of votes

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

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

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
 - (b) the ID declaration forms, if required,
 - (c) the list of spoilt ballot papers and the list of spoilt text message votes,
 - (d) the list of lost ballot documents,
 - (e) the list of eligible voters, and
 - (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

41. Arrangements for counting of the votes

- 41.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 41.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
- (a) the board of directors and the Council of Governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
 - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

42. The count

- 42.1 The returning officer is to:
- (a) count and record the number of:
 - (i) ballot papers that have been returned; and
 - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
 - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 41.2(ii) where vote counting software is being used.
- 42.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 42.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

43. Rejected ballot papers and rejected text voting records

- 43.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to rules 43.2 and 43.3, be rejected and not counted.

43.2 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.

43.3 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.

43.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 43.2 and 43.3,

endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

43.5 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.

43.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules 43.7 and 43.8, be rejected and not counted.

43.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

43.8 A text voting record on which a vote is marked:

- (a) otherwise than by means of a clear mark,
- (b) by more than one mark,

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

43.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules 43.7 and 43.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

43.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- (a) voting for more candidates than the voter is entitled to,
- (b) writing or mark by which voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

44. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

45. Declaration of result for contested elections

45.1 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 Sheffield Health & Social Care NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

- 45.2 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 43.5,
 - (c) the number of rejected text voting records under each of the headings in rule 43.10, available on request.

46. Declaration of result for uncontested elections

- 46.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:
- (a) declare the candidate or candidates remaining validly nominated to be elected,
 - (b) give notice of the name of each candidate who he or she has declared elected to the Chair of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.

PART 8: DISPOSAL OF DOCUMENTS

47. Sealing up of documents relating to the poll

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

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

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

- 47.2 The returning officer must not open the sealed packets of:

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

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

- 47.3 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.

48. Delivery of documents

- 48.1 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.

49. Forwarding of documents received after close of the poll

- 49.1 Where:

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

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

50. Retention and public inspection of documents

- 50.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

- 50.2 With the exception of the documents listed in rule 51.1, 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.

- 50.3 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.

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

- 51.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

by any person without the consent of the board of directors of the corporation.

- 51.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 51.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

51.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

51.4 On an application to inspect any of the documents listed in rule 51.1 the board of directors of the corporation must:

- (a) in giving its consent, and
- (b) in making the documents available for inspection

ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

- (i) that his or her vote was given, and
- (ii) that [Monitor NHS England](#) has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

52. Countermand or abandonment of poll on death of candidate

52.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by 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.

52.2 Where a new election is ordered under rule 52.1, 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.

52.3 Where a poll is abandoned under rule 52.1(a), rules 52.4 to 52.7 are to apply.

52.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

52.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

52.6 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.

52.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 52.4 to 52.6, the returning officer is to deliver them to the Chair of the corporation, and rules 50 and 51 are to apply.

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

53. Election expenses

53.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to [Monitor NHS England](#) under Part 11 of these rules.

54. Expenses and payments by candidates

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

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

55. Election expenses incurred by other persons

55.1 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.

55.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 56 and 57.

Publicity

56. Publicity about election by the corporation

56.1 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.

56.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 57, 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.

56.3 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.

57. Information about candidates for inclusion with voting information

57.1 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.

57.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

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

58.1 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.

58.2 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

59. Application to question an election

59.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to [NHS England Monitor](#).

59.2 An application may only be made once the outcome of the election has been declared by the returning officer.

59.3 An application may only be made to [NHS England Monitor](#) by:

- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 59.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as ~~Monitor~~ NHS England may require.
- 59.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 59.6 If ~~Monitor~~ NHS England requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 59.7 ~~NHS England~~ Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 59.8 The determination by the person or panel of persons nominated in accordance with rule 59.7 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.
- 59.9 ~~NHS England~~ Monitor may prescribe rules of procedure for the determination of an application including costs.

PART 12: MISCELLANEOUS

60. Secrecy

60.1 The following persons:

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

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

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

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

60.3 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.

61. Prohibition of disclosure of vote

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

62. Disqualification

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

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

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

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

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

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

CORE CONSTITUTION

ANNEX 6

Additional Provisions - Council for Governors

ADDITIONAL PROVISIONS: COUNCIL OF GOVERNORS

1. TERMS OF OFFICE

- 1.1 Subject to the transitional provisions contained in paragraph 2 below in relation to the Initial Election of Governors, a Governor shall be:
 - 1.1.1 elected or appointed for a term of three years;
 - 1.1.2 eligible for re-election or re-appointment at the end of that term but may not serve as a Governor for more than a total of nine years;
- 1.2 shall cease to hold office if:
 - 1.2.1 they cease to be a Member of the Trust Constituency from which they were elected or, in the case of an Appointed Governor, if the body which appointed them withdraws its appointment at any time;
 - 1.2.2 their term of office is terminated in accordance with paragraph 3 below and/or they are disqualified from or are otherwise ineligible to hold office as a Governor; or
 - 1.2.3 they resign by notice in writing to the Trust.

2. TRANSITIONAL PROVISIONS

This section has been removed as no longer relevant.

3. REMOVAL AND DISQUALIFICATION

- 3.1 A Governor shall not be eligible to become or continue in office as a Governor if:
 - 3.1.1 they are less than 16 years of age at the date they are nominated for election or appointment;
 - 3.1.2 they are an Elected Governor and they cease to be a Member of the constituency or class by which they were elected;
 - 3.1.3 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of them by notice in writing to the Trust;
 - 3.1.4 any of the grounds contained in paragraph 15 of the Constitution apply to them;
 - 3.1.5 they have within the preceding two years been lawfully dismissed otherwise than by reason of redundancy or ill health from any paid employment with a Health Service Body and/or any public sector body;
 - 3.1.6 they are a person whose term of office as the Chair or as a Member or Director of a Health Service Body and/or public sector body has been terminated on the grounds that their continuance in office is no longer in the best interests of the health service or public sector, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
 - 3.1.7 they have had their name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 7 of that Act and has not subsequently had their name included in such a list [\[note this relates to suspension of pharmacists by NHSE for public interest reasons\]](#);
 - 3.1.8 they have failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act;

- 3.1.9 they are subject to a direction made under Section 142 of the Education Act 2002;
- 3.1.10 they are included in any barred list established in connection with the Safeguarding Vulnerable Groups Act 2006 or is on an equivalent list maintained under the law of Scotland or Northern Ireland;
- 3.1.11 they ~~have been removed~~ ~~Independent Regulator has exercised its powers to remove them~~ as a Governor of the Trust or ~~have been s~~ suspended ~~them~~ from office or ~~has~~ disqualified ~~them~~ from holding office as a Governor of the Trust for a specified period or ~~have been removed, disqualified or suspended as a Governor of any other the Independent Regulator has exercised any of those powers in relation to them on any other occasion whether in relation to the Trust or some other~~ NHS Foundation Trust;
- 3.1.12 they have received a written warning from the Trust for verbal and/or physical abuse towards Trust staff, service users, their carers, visitors or a member of the Trust;
- 3.1.13 they are a vexatious or persistent litigant or complainant with regard to the Trust's affairs as defined in appendix 1 of the Complaints Policy;
- 3.1.14 their term of office is terminated pursuant to paragraph 4 below;
- 3.1.15 they are a member of a Staff Class and any professional registration relevant to their eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months;
- 3.1.16 they have been expelled for whatever reason from another NHS Foundation Trust;
- 3.1.17 if they were at any time eligible to be a member of the Staff Constituency during the period they are or were a member of a Public Constituency;
- 3.1.18 information revealed by a Disclosure and Barring Service check is such that it would be inappropriate, in the reasonable opinion of the Chief Executive, for them to become or continue as a Governor on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 3.1.19 they are a Director of the Trust or another Foundation Trust;
- 3.1.20 they are a Governor of another Foundation Trust which is considered by the Secretary, in his/her absolute discretion, to be a competitor of the Trust or notwithstanding the duty to 'collaborate' where there would be considered to be a potential conflict of interest;
- 3.1.21 they are a partner or spouse or otherwise related to a Director of the Trust;
- 3.1.22 they lack the capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a Governor.
- 3.2 Where a person has been elected or appointed to be a Governor and they become disqualified from that appointment they shall notify the Trust in writing of such disqualification as soon as practicable and in any event within fourteen days of first becoming aware of those matters which rendered them disqualified.
- 3.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare them disqualified and shall give them notice in writing to that effect as soon as practicable.
- 3.4 Upon the despatch of notice under paragraphs 3.2 and 3.3 above, that person's tenure of office as a Governor shall thereupon be terminated and they shall cease to be a Governor and their name shall be removed from the Register of Governors.

4. TERMINATION OR SUSPENSION OF TENURE

- 4.1 A Governor's term of office shall be terminated:
- 4.1.1 by the Governor giving notice in writing to the Company Secretary of their resignation from office at any time during that term of office;
 - 4.1.2 by the Trust if any grounds exist under paragraph 3 above;
 - 4.1.3 by the Council of Governors if they have failed to attend 2 successive meetings of the Council of Governors unless the Council of Governors is satisfied:
 - (a) the absence was due to reasonable cause; and
 - (b) that the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.
- 4.2 A Governor's term of office shall be terminated if the Council of Governors resolves by a two-thirds majority of those present and voting that:
- 4.2.1 their continuing in office as a Governor would or would be likely to prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 4.2.2 their continuing in office as a Governor would or would be likely to prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or
 - 4.2.3 their continuing in office as a Governor would or would be likely to adversely affect public confidence in the goods and services provided by the Trust; or
 - 4.2.4 their continuing in office as a Governor would or would be likely to otherwise bring the Trust into disrepute or is detrimental to the interest of the Trust; or
 - 4.2.5 it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
 - 4.2.6 they have failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required them to undertake in their capacity as a Governor.
 - 4.2.7 they have in their conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust; or
 - 4.2.8 they have committed a material breach of the Trust's constitution or any standing orders or any code of conduct applicable to Governors of the Trust.
- 4.3 Where there are concerns about a Governor's conduct (including but not limited to where any of the circumstances in 4.2 above apply) the Chair shall be authorised to take such action as may be immediately required, including but not limited to suspension of the Governor concerned and/or exclusion from Trust property until the matter can be investigated and/or so that the investigation of any other third party may be completed. Any suspension of a Governor shall be confirmed to them in writing in such form as the Chair may decide in the circumstances. The Chair shall be authorised to make such arrangements as they consider appropriate for an investigation. No investigation shall be undertaken by the Trust that might reasonably foreseeably jeopardise or interfere with any investigation carried out by a third party who has primary responsibility for the investigation of the conduct, or alleged conduct, giving rise to the concern unless or until their investigation is complete.
- 4.4 Where an investigation (whether carried out by or on behalf of the Trust or a third party) identifies that a Governor has conducted themselves in such a way as to have failed to

comply with this Constitution, and/or any code of conduct applying to Governors, and/or the Standing Orders, the Council of Governors ~~the Governor will be asked to respond to the investigation on potential non-compliance and it will then be for the Council of Governors, on the recommendation of the Chair, to agree, where appropriate, to remove the Governor shall be asked to decide,~~ by two-thirds majority of those present and voting, ~~to approve a statement setting out the Governor's non-compliance.~~

~~4.5 The Governor concerned shall be notified in writing of the non-compliance and shall be invited to respond within a defined appropriate and reasonable timescale. The Governor shall be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.~~

~~4.6 The Governors, by a two-thirds majority of those present and voting shall consider the Governor's response and shall decide whether to uphold the statement of non-compliance.~~

4.74.5 Where the Council of Governors decides to uphold the statement of non-compliance it may impose such sanctions as shall be deemed appropriate. Such sanctions may include the issuing of a written warning as to the Governor's future conduct and consequences, suspension from office for a period to be determined by the Council of Governors, non-payment of expenses and removal of the Governor from office.

~~4.8 If the Chair is minded to propose a resolution under paragraph 4.2 and the Governor concerned disagrees with the proposal, the Chair shall offer the Governor in question the opportunity to have the evidence reviewed by an independent assessor. The Chair and the Governor concerned shall seek to agree on a mutually acceptable independent assessor. If no agreement can be reached within 14 days of an individual being proposed, the Chair shall decide. The independent assessor shall be provided with terms of reference for the review, to be approved by the Chair, requiring the review principally to determine whether or not the proposal is reasonable.~~

~~4.9 Where it is proposed to remove a Governor from office (including following any review by an independent assessor) under paragraph 4.2, the Chair (or in their absence, the Vice Chair) shall put forward a proposal to be considered in a meeting of the Council of Governors convened for that purpose. A two thirds majority of the Governors present and voting at that meeting shall be required to pass such a resolution.~~

4.104.6 Upon a Governor resigning under paragraph 4.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and their name shall be removed from the Register of Governors and all Trust property returned, including ID badge.

4.144.7 The Standing Orders adopted by the Council of Governors may provide further for the process to be adopted in cases relating to the termination of a Governor's tenure.

4.124.8 A Governor who resigns or whose tenure of office is terminated before it expires shall not be eligible to stand for re-election for a period of three years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of, whichever is the later.

5. VACANCIES

5.1 Where a Governor's term of office terminates for one of the reasons set out in paragraphs 3 or 4, Elected Governors shall be replaced in accordance with paragraphs 5.2 and 5.4 below and, in the case of Appointed Governors, the Trust shall invite the relevant appointing body to appoint a new Governor to hold office for the remainder of the term of office within 30 days of the vacancy having arisen.

5.2 Where an Elected Governor ceases to hold office during their term of office the Trust shall offer the candidate who secured the second highest number of votes in the last election for the Constituency (or Class of Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office of Governor for the unexpired balance of the former Governor's term of office. If that candidate does not

accept that invitation it shall be offered to the candidate who secured the next highest number of votes in the last said election until the vacancy is filled.

- 5.3 If no reserve Candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within 6 months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public Governors and Service Users and Carers' Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
- 5.4 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning Officer shall conduct or shall oversee the conduction of the process set out in paragraphs 5.2 and 5.3 above.
- 5.5 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

6. ROLE

6.1 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the [NHS Foundation Trust Code of Governance for NHS Provider Trusts](#).

6.2 Subject to the requirement specified in paragraph 6.1, each Governor shall exercise their own skill and judgement in their conduct of the Trust's affairs and shall in their stewardship of the Trust's affairs, bring as appropriate the perspective of the constituency or organisation by which they were elected or appointed, as the case may be.

6.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Council of Governors shall;

6.3.1 assist the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set; and

6.3.2 monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with its Terms of Authorisation and the terms of this Constitution.

6.4 canvass the opinion of the trust's members and the public, and for appointed governors the body they represent, on the NHS foundation trust's forward plan, including its objectives, priorities and strategy, and their views should be communicated to the board of directors. This should include taking into account the needs of the wider population as part of system working to address inequalities. The annual report should contain a statement as to how this requirement has been undertaken and satisfied.

6.3.2

7. MEETINGS

7.1 The Council of Governors shall hold not less than three general meetings each Financial Year.

7.2 All such meetings shall be open to the public unless the Council of Governors resolves that the public be excluded from the meeting, whether for the whole or part of the proceedings on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings. The Chair may also exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

7.3 The Council of Governors may appoint committees or sub-committees consisting of its

members to advise and assist it in the discharge of its functions.

- 7.4 The Council of Governors may request the attendance of some or all of the members of the Board of Directors at its meetings and the Board of Directors may attend and may

give such reports and information to the Council of Governors as the Board of Directors considers appropriate and subject always to the other provisions of this Constitution.

- 7.5 Further provisions relating to the Council of Governor meetings are set out in the Council of Governors Standing Orders at Annex 7 of this Constitution.

8. DECLARATIONS

- 8.1 A Member of a Public Constituency standing for election as Governor must make a declaration for the purposes of Section 60(2) of the 2006 Act in the form specified below stating the particulars of their qualification to vote as a Member and that they are not prevented from being a Member of the Council of Governors by virtue of any provisions of this Constitution. It is an offence to knowingly or recklessly make a statement or declaration which is false in material particular.

- 8.2 The specified form of declaration shall be set out on the Nomination Form referred to in the Model Rules for Elections at Annex 5 and shall state as follows:

"I, the above named candidate, consent to my nomination and agree to stand for election. I confirm that, to the best of my knowledge, the information provided on (or with) this form is accurate. I also agree to abide by the Sheffield Health and Social Care NHS Foundation Trust Code of Conduct and the NHS core principles.

I declare that I am resident at the address given and that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named overleaf. I declare that I am not debarred from standing by any of the provisions detailed in Section 1 of the guidance notes and the Exclusion and Disqualification criteria also detailed in the guidance notes supplied with this nominations paper. I understand if any declaration on this form is later found to be false I will, if elected, lose my seat on the Council of Governors and may have my membership withdrawn."

- 8.3 A Governor elected to the Council of Governors by the Public Constituency or a class of the Service Users and Carers' Constituency or the Staff Constituency may not for the purposes of section 60(3) of the 2006 Act vote at a meeting of the Council of Governors unless within the period since their election they have made a declaration in the form specified in paragraph 8.4 below stating which constituency they are a Member of and that they are not prevented from being a member of the Council of Governors by paragraph 8 of schedule 7 to the 2006 Act or by virtue of any provisions of this Constitution.

- 8.4 The specified form of declaration referred to in paragraph 8.3 above shall state as follows:

"I declare that I am a Member of the [*insert Class*] of the [Public Constituency], [Service Users and Carers' Constituency] or the [Staff Constituency] [*delete as applicable*] and am eligible to vote at a meeting of the Council of Governors and that I am not debarred from voting by any of the provisions in paragraph 8 of schedule 7 of the 2006 Act or by virtue of any provisions of this Constitution."

CORE CONSTITUTION

ANNEX 7

Standing Orders - Council of Governors

Sheffield Health and Social Care Trust NHS Foundation Trust

Standing Orders

Council of Governors

FOREWORD

This document provides a regulatory and business framework for the conduct of the Council of Governors.

INTRODUCTION

Statutory Framework

The Sheffield Health and Social Care NHS Foundation Trust (“the Trust”) is a Public Benefit Corporation that was established by the granting of Terms of Authorisation by the Independent Regulator of NHS Foundation Trusts (~~NHS England Monitor, now known as NHS Improvement~~).

The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 and in the Trust’s Terms of Authorisation issued by the Independent Regulator.

As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

NHS Framework

Paragraph 15 of the Constitution, requires the Council of Governors to adopt its own Standing Orders for its practice and procedure.

1. INTERPRETATION

- 1.1 In these Standing Orders, the provisions relating to Interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. THE COUNCIL OF GOVERNORS

2.1 Roles and Responsibilities of Governors:

- 2.1.1 Appointment and removal of the Chair and Non-Executive Directors (Constitution paragraph 26)
- 2.1.2 Approve the appointment of the Chief Executive (Constitution paragraphs 29)
- 2.1.3 To decide the remuneration and allowances and other terms of offices of the Non-Executive Directors (Constitution paragraph 35.1)
- 2.1.4 Appoint and remove the Auditor (Constitution paragraph 39.2)
- 2.1.5 Receive the Annual Report and Accounts (Constitution paragraph 43)
- 2.1.6 Monitor the activities of the Trust with a view to seeking to ensure as far as possible, that they are being conducted in a manner consistent with its Terms of Authorisation and the terms of its Constitution
- 2.1.7 Oversee and advise the Board of Directors regarding future Trust plans and priorities
- 2.1.8 Oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in seeking to ensure that the Council of Governors reflects all the interests of the membership community
- 2.1.9 To respond, as appropriate, when consulted by the Board of Directors
- 2.1.10 To consider resolution to remove a Governor from the Council of Governors in accordance with Annex 6, paragraph 4
- 2.1.11 To seek to ensure that the interests of the community served by the Trust are appropriately represented when taking into account the Membership Strategy.

2.1.12 Approval of significant transactions

- 2.2 **Composition of the Council of Governors** – The composition of the Council of Governors shall be as set out in Annex 4 of the Constitution.
- 2.3 **Appointment of the Chair and Non-Executive Directors** – The Chair and Non-Executive Directors are appointed by the Council of Governors in accordance with paragraph 26 of the Constitution.
- 2.4 **Terms of Office of the Chair and Non-Executive Directors** – The provisions governing the period of tenure of office of the Chair and the Non-Executive Directors are contained in paragraph 35 of the Constitution.
- 2.5 **Appointment of Vice-Chair of the Council of Governors** – The Council of Governors shall appoint one of the Non-Executive Directors as Vice-Chair in accordance with paragraph 28 of the Constitution.
- 2.6 Any Director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Company Secretary to the Trust and the Governors of the Trust may thereupon appoint another Vice-Chair in accordance with paragraph 28 of the Constitution.

- 2.7 The Vice-Chair may preside at meetings of the Council of Governors in the following circumstances:
- 2.7.1 When there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chair is not present.
 - 2.7.2 Not used.
 - 2.7.3 When the remuneration, allowance and other terms and conditions of the Chair are being considered.
 - 2.7.4 When the appointment of the Chair is being considered, should the current Chair be a candidate for re-appointment.
 - 2.7.5 On occasions when the Chair declares a financial, non-financial professional, non-financial personal or indirect interest that prevents them from taking part in the consideration or discussion of a matter before the Council of Governors.

2.8 Appointment of the Reserve Chair of the Council of Governors

- 2.8.1 The Council of Governors shall in general meeting appoint a Public Constituency or Service Users and Carers Constituency Governor to be the Reserve Chair of the Council of Governors to preside at meetings in the absence of the Chair and Vice Chair or where they are both precluded from so presiding for conflict of interest or other reason.
- 2.8.2 Any Governor appointed in accordance with Standing Order 2.8.1 above may at any time resign from the office of Reserve Chair by giving notice in writing to the Secretary to the Trust and the Governors of the Trust may thereupon appoint another Reserve Chair.

2.9 Role of Reserve Chair

The Reserve Chair may preside at meetings of the Council of Governors in the following circumstances:-

- 2.9.1 when there is a need for someone to have the authority to chair any meeting of the Council Governors when the Chair and Vice Chair are not present;
- 2.9.2 on those occasions when the Council of Governors is considering matters relating to Non-Executive Directors, and it would be inappropriate for the Chair or Vice Chair to preside;
- 2.9.3 when the remuneration, allowances and other terms and conditions of the Chair or Vice Chair (as the case may be) are being considered;
- 2.9.4 when the appointment of the Chair is being considered, should the current Chair be a candidate for reappointment and the Vice Chair is absent or otherwise precluded from presiding; or
- 2.9.5 on occasions when the Chair and Vice Chair declare a financial, non-financial professional, non-financial personal or indirect interest that prevents them from taking part in the consideration or discussion of a matter before the Council of Governors.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 Calling Meetings

- 3.1.1 Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website.

- 3.1.2 The Company Secretary shall ensure that within the meeting cycle of the Council of Governors, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 3.2 **Admission of the Public** – The provisions for the admission of the public to meetings of the Council of Governors are detailed at paragraph 7.2 of Annex 6 of the Constitution.
- 3.3 **Chair of Meetings** – The Chair of the Trust, or in their absence, the Vice Chair, is to preside at meetings of the Council of Governors. If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice Chair shall preside.
- 3.4 **Setting the Agenda** – The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 3.5 **Agenda** – A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included in request in writing to the Chair or Company Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chair.
- 3.6 **Notices of Motion** – A Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair or Company Secretary, who shall insert in the agenda for the meeting all notices so received subject to the Notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without Notice on any business mentioned on the agenda in accordance with Standing Order 3.5, subject to the Chair's discretion.
- 3.7 **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.8 **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall be in writing, be in accordance of Standing Order 3.6 and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within six months. However, the Chair may do so if they consider it appropriate.
- 3.9 **Motions** – The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.10 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 3.10.1 An amendment to the motion.
- 3.10.2 The adjournment of the discussion or the meeting.
- 3.10.3 That the meeting proceed to the next business.
- 3.10.4 That the motion be now put.
- No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
- 3.11 **Chair's Ruling** – Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the

decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive).

- 3.12 **Voting** – Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chair so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.
- 3.13 All questions put to the vote shall, at the discretion of the person presiding, 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.
- 3.14 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.
- 3.15 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.16 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.17 **Minutes** – The Minutes of the proceedings of a matter shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.18 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.19 Minutes of meetings will be taken and circulated in accordance with Governors' wishes.
- 3.20 **Suspension of Standing Orders** – Except where this would contravene any statutory provision, the Terms of Authorisation or any provision of the Constitution, any one or more of the Standing Orders may be suspended at any meeting provided that at least two thirds of the Council of Governors are present, including one Public Governor, one Staff Governor and one Patients and Carers' Governor, and that a majority of those present vote in favour of suspension.
- 3.21 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.22 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 3.23 No formal business may be transacted while Standing Orders are suspended.
- 3.24 **Variation and Amendment of Standing Orders** – these Standing Orders shall be amended only if:
- 3.24.1 the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution; and
- 3.24.2 unless presented by the Chair or the Chief Executive, a notice of motion under Standing Order 3.6 has been given;
- 3.24.3 at least two thirds of the Governors are present, including one Staff Governor, one Public Governor and one Service Users and Carers Governor; and
- 3.24.4 no fewer than half the Governors vote in favour of amendment.; and

subject always to the fact that no change shall be made without the prior consent of the Independent Regulator having first been obtained.

- 3.25 **Record of Attendance** – the names of the Governors present at the meeting shall be recorded in the minutes.
- 3.26 **Quorum** – The Council of Governors shall be deemed quorate if:-
- 3.26.1 at least one third of the total membership, at a given point in time, of the Council of Governors is present; and
- 3.26.2 of those at least half are made up of eight (8) Service Users, and Carers, and Public Governors (including at least one Public Governor, and at least two Governors from the Service User and Carers' Constituency), with at least one Staff Governor and one Appointed Governor or Governor from a partnership body as outlined in the constitution are present in person (including virtually if the meeting is not held in person).
- 3.27 A Governor who has declared a non-financial professional, non-financial personal or indirect interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a financial interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing or a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.28 Subject to Standing Orders in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chair, to speak to any item under consideration.

4. COMMITTEES

- 4.1 Except as required by the Constitution, the Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a committee.

5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 5.1 **Declaration of Interests** – in accordance with paragraph 20 of the Constitution, Governors are required to declare formally any financial, non-financial professional, non-financial personal or indirect interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 5.2 A Governor must declare to the Company Secretary:
- 5.2.1 any financial, non-financial professional, non-financial personal or indirect interest in any contract, proposed contract or other matter concerning the Trust, and
- 5.2.2 any interests which are relevant and material to the business of the Trust.
- 5.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Company Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Standing Orders and delivering it to the Company Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Company Secretary shall amend the Register of Interests upon receipt of notification within three working days.

- 5.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if they have declared a financial interest, they shall not take part in the consideration or discussion of the matter. The provisions of this paragraph are subject to standing order.
- 5.5 “relevant and material” interests may include but may not be limited to the following:
- 5.5.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - 5.5.2 ownership or part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - 5.5.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
 - 5.5.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 5.5.5 any connection with a voluntary or other organisation contracting for or commissioning NHS services;
 - 5.5.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
 - 5.5.7 research funding/grants that may be received by an individual or their department;
 - 5.5.8 interests in pooled funds that are under separate management.
- Interests can fall into the following categories:
- Financial interests;
 - Non-financial professional interests;
 - Non-financial personal interests; or
 - Indirect interests
- 5.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a financial interest.
- 5.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a financial interest in a contract, proposed contract or other matter, if:
- 5.7.1 they, or a nominee of theirs, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 5.7.2 they are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 5.8 A Governor shall not be treated as having a financial interest in any contract, proposed contract or other matter by reason only:
- 5.8.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;

- 5.8.2 of an interest in any company body or person with which they are connected as mentioned standing orders 5.3, 5.4 and 5.6 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 5.9 Where a Governor:
- 5.9.1 has an indirect financial 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
- 5.9.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- 5.9.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, the governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty disclose their interest.
- 5.10 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an indirect interest of the other.
- 5.11 If Governors have any doubt about the relevance of an interest, this should be discussed with the Company Secretary.
- 5.12 **Register of Interests** - the Company Secretary shall record any declarations of interest made in a Register of Interests kept by them in accordance with paragraph 36 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
- 5.13 Subject to Section 37 of the Constitution the Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a member of the Trust then a charge may be made for doing so.

6. STANDARDS OF BUSINESS CONDUCT

- 6.1 **Policy** – in relation to their conduct as a Governor of the Trust, each Governor must comply with the Trust's Code of Conduct for Governors. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.
- 6.2 **Interest of Governors in Contracts** – if it comes to the knowledge of a Governor that a contract in which they have any financial interest not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Company Secretary of the fact that they are interested therein. In the case of married persons or persons living together as partners or any other indirect interest, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 6.3 A Governor shall not solicit for any person any appointment in the Trust.

7. REMUNERATION

- 7.1 Governors are not to receive remuneration.

8. PAYMENT OF EXPENSES TO GOVERNORS

- 8.1 The Trust will pay travelling expenses to Governors at the prevalent NHS Public Transport rate for attendance at General Meetings of the Governors, or any other business authorised by the Company Secretary as being under the auspices of the Council of Governors.
- 8.2 Expenses will be authorised and reimbursed through the Company Secretary's office on receipt of a completed and signed expenses form provided by the Company Secretary.
- 8.3 A summary of expenses paid to Governors will be published in the Annual Report.

9. MISCELLANEOUS

- 9.1 **Review of Standing Orders** – These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 9.2 **Vice-Chair** – In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors which arises, the Vice-Chair may exercise such power as the Chair would have in those circumstances.
- 9.3 **Notice** – Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.
- 9.4 **Confidentiality** – A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

10. COUNCIL OF GOVERNORS: NOMINATIONS AND REMUNERATION COMMITTEE

- 10.1 Subject to the provisions of paragraph 27 of the Constitution in relation to the appointment of the ~~Initial~~ Chair and Non-Executive Directors of the Trust the Chair and other Non-Executive directors shall be appointed in accordance with standing order 10.4 below.
- 10.2 The Council of Governors shall establish a committee of its members to be called the Nominations and Remuneration Committee ("the Committee") to discharge those functions in relation to the appointment of the Chair and Non-Executive Directors described in standing order 10.3 below and such other functions as are provided for in standing order 10.5 below.
- 10.3 The functions of the Committee shall be as follows:
- 10.3.1 to determine the criteria and process for the selection of the candidates for office as Chair or other Non-Executive Director of the Trust having first consulted with the Board of Directors as to those matters and having regard to such views as may be expressed by the Board of Directors ~~including the Trust's proposal as set out in standing order 10.6 below;~~
- 10.3.2 on expiry of the Non-Executive Director's first term of appointment, the Committee shall consider whether to recommend to the Council of Governors to reappoint the Non-Executive Director. This recommendation can only be made if the Non-Executive Director has been subject to an outstanding appraisal. If the Council of Governors does not so appoint, if the individual does not wish to continue, or if the Committee does not consider the reappointment appropriate, then suitable new candidates will be identified in accordance with the procedure outlined in paragraph 10.3.1 above.
- 10.3.3 to make recommendation to the Council of Governors as to potential candidates for appointment as Chair or other Non-Executive Director, as the case may be; and
- 10.3.4 Best practice is that the selection panel ~~for~~ should include at least one external assessor from NHS England and/or a representative from a relevant ICB, and the ~~foundation-Trust~~ trust should engage with NHS England to agree the approach.

~~10.3.4~~10.3.5 as further stipulated in paragraph 10.5 below.

- 10.4 The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors and of the Committee as to the suitability of the available candidate ~~s, and to the proposals of the Trust as set out in standing order 10.5 below.~~ Reappointment of an existing Non-Executive Director is subject to the approval of 60% of governors present and voting and should take account of performance. ~~Percentage for discussion by the Council of Governors termination is currently a requirement of 2/3rds of those present and voting – the NRC would recommend the two figures are the same for re-appointment and termination.~~
- 10.5 The Committee shall:-
- 10.5.1 on a regular and systematic basis monitor the performance of the Chair and other Non-Executive Directors and make reports thereon to the Council of Governors from time to time when requested to do so or when, in the opinion of the Committee, the results of such monitoring ought properly to be brought to the attention of the Council of Governors; and
- 10.5.2 consider and make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Chair and other Non-Executive Directors.

CORE CONSTITUTION

ANNEX 8

Standing Orders - Board of Directors

Sheffield Health and Social Care NHS Foundation Trust

Standing Orders

Board of Directors

Statutory Framework

The Sheffield Health and Social Care NHS Foundation Trust (“**the Trust**”) is a public benefit corporation which was established under the 2006 Act ~~and subsequent Acts on [insert date]~~, subject to its Constitution and Terms of Authorisation.

The place of business of the Trust is ~~Fulwood House, Old Fulwood Road, Sheffield S10 3TH~~ Centre Court, Atlas Way, Sheffield, S4 7QQ.

NHS Foundation Trusts are governed by a regulatory framework that confers the functions of the Trust and comprises the 2006 Act as amended, the Constitution and the Terms of Authorisation. The powers of the Trust are set out in the 2006 Act subject to any restrictions in the Terms of Authorisation.

The Trust will be bound by such other statute and legal provisions or guidance which governs the conduct of its affairs.

As a statutory body the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the later role it is accountable to the Charity Commission for those funds deemed to be charitable. In addition, the Trust has a common law duty as a bailee for patients’ property held by the Trust on behalf of the patients

The Trust also has statutory powers under section ~~256-75~~ of the 2006 Act to fund projects jointly planned with local authorities, voluntary organisations and other bodies.

In accordance with paragraph 27 of the Constitution, the Standing Orders of the Board of Directors are to be set out in this Annex 8. The Trust adopts Standing Orders for the regulation of proceedings and business. The Trust has adopted Standing Financial Instructions as an integral part of the Standing Orders setting out the responsibilities of individuals.

NHS Framework

The Trust Board will draw up a schedule of decisions reserved to the Board, and will ensure that management arrangements are in place to ensure responsibility to be clearly delegated to the Executive Committee and to senior executives (a scheme of delegation). The Trust will also have regard to the ~~NHS Foundation Trust~~ Code of Governance for NHS Provider Trusts and the Constitution, which make various requirements concerning possible conflicts of interest of Board Directors.

~~The Code of Practice on Openness in the NHS (which is subject to the~~ The Freedom of Information Act 2000) sets out the requirements for public access to information on the NHS.

Delegation of Powers

The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO 4) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 5 or by an Officer of the Trust, in each case subject to the terms of the Constitution and such restrictions and conditions as the Trust thinks fit ". Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers).

1. INTERPRETATIONS AND DEFINITIONS

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Company Secretary).
- 1.2 All references in these Standing Orders to the masculine gender shall be read equally applicable to the feminine gender.
- 1.3 For convenience, and unless the context otherwise requires, the terms and expressions contained within the Interpretations and Definitions section of the Constitution at page 1 are incorporated and are deemed to have been repeated here verbatim for the purposes of interpreting words contained in this Annex 8 and in addition:

"Audit & Risk Committee" & "Quality Assurance Committee" means a committee whose functions are concerned with providing the Trust Board with a means of independent and objective review and monitoring financial systems and information, compliance with law, guidance and codes of conduct, effectiveness of risk management, the processes of governance and the delivery of the Board Assurance Framework.

"Committee" means a committee or sub-committee appointed by the Trust.

"Committee Members" shall be persons formally appointed by the Trust to sit on or to chair specific committees.

"Contracting and Procuring" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets..

"Commissioning" means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

"Funds held on trust" means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instruments, or chooses subsequently to accept under powers derived under Schedule 6, paragraph 8 of the 2006 Act. Such funds may or may not be charitable.

"Nominated Officer" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

"Officer" means an employee of the Trust or any other person holding a paid appointment or office with the Trust.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

2. THE BOARD

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee. Powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Foundation Trust.
- 2.3 The powers of the Trust shall be exercised in public or private session as provided for in SO 3.

- 2.4 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in Reservation of Powers to the Board and have effect as if incorporated into the Standing Orders.
- 2.5 **Composition of the Board** - In accordance with the Constitution, the composition of the Board shall comprise Directors being:
- 2.5.1 the non-executive Chair of the Trust;
- 2.5.2 ~~up to five~~ other Non-Executive Directors;
- 2.5.3 ~~up to five~~ Executive Directors, including:
- (a) the Chief Executive (Accounting Officer);
- (b) Finance Director;
- (c) a registered medical practitioner or a registered dentist;
- (d) a registered nurse or a registered midwife
- ~~unless, subject to SO 2.5A below, the Board determines at any time to increase the number in SO 2.5.2 or 2.5.3 above.~~
- 2.5A The Board of Directors shall at all times be constituted so that the number of Non- Executive Directors (excluding the Chair) equals or exceeds the number of Executive Directors. Where numbers of those present and voting, are equal the Chair, or in their absence the Deputy Chair, will have a casting vote.
- 2.6 **Appointment of the Chair and Directors** – The Chair and Non-Executive Directors are appointed (and removed) by the Council of Governors. The Chief Executive will be appointed or removed by the Non-Executive Directors subject to approval by the Council of Governors. The Trust shall appoint an Appointments Committee whose members shall be the Chair, Non-Executive Directors and the Chief Executive whose function will be to appoint the other Executive Directors of the Trust.
- 2.7 **Terms of Office of the Chair and Directors** – The provisions governing the period of tenure of office of the Chair and Directors and for the termination or suspension of office of the Chair and Directors are set out in the Constitution and these Standing Orders.
- 2.8 **Appointment and Powers of Vice-Chair** – Subject to SO 2.10 below, the Council of Governors may appoint a Non-Executive Director to be Vice-Chair for such a period, not exceeding the remainder of their term as Non-Executive Director of the Trust, as they may specify on appointing them.
- 2.9 Any Non-Executive Director so elected may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair and the Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chair in accordance with standing order 2.8.
- 2.10 Where the Chair of the Trust has died or has ceased to hold office or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Vice Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform their duties, be taken to include references to the Vice-Chair.
- 2.11 **Joint Directors** - Where more than one person is appointed jointly to a post of Director, those persons shall count for the purpose of SO 2.5 as one person.
- 2.12 **Role of Directors** – The Board will function as a corporate decision-making body within which all Directors will be equal. Their role as members of the Board will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and

other functions. In exercising these functions the Board will consider guidance from the NHS Foundation Trust Code of Governance as amended from time to time.

2.13 **Senior Independent Director** – the Board of Directors shall appoint one of the Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director shall be available to Members and Governors if they have concerns which contact through the normal channels of the Chair, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.

2.14 **Associate Directors** – the Board may appoint Associate Directors to assist the Board in exercising its specific functions. Such Associate Directors:

~~2.14.1~~ may attend Board meetings as non-voting members of the Board but not count towards the quorum.

~~2.14.1~~ ~~by invitation and may~~ serve on any committee ~~or sub-committee~~ and be counted as such as part of the quorum; ~~and~~

~~2.14.2~~ ~~are not members of the Board and are not entitled to vote on any resolution of the Board.~~

3. MEETINGS OF THE BOARD

3.1 **Admission of the Public and the Press** – The meetings of the Board of Directors shall be open to members of the public and press unless the Board decides otherwise in relation to all or part of a meeting for reasons of confidentiality or on other proper grounds. A Director shall not disclose any matter reported to the Board, notwithstanding that the matter or action has been concluded, if the Board shall resolve that it is confidential.

3.2 In the event that the public and press are admitted to all or part of a Board meeting pursuant to SO 3.1 above, the Chair (or Vice Chair) shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and the public will be required to withdraw upon the Board resolving "that in the interests of public order the meeting adjourn for (*the period to be specified*) to enable the Board to complete business without the presence of the public".

3.3 Nothing in these Standing Orders shall be construed as permitting the introduction by the public or press representatives of recording, transmitting, video or small apparatus into meetings of the Board or Committee. Such permissions shall be granted only upon resolution of the Trust.

3.4 **Calling of Meetings** – Ordinary meetings of the Board shall be held a minimum of six-four times per year.

3.5 The Chair of the Trust may call a meeting of the Board at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to them, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to them at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.

3.6 **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 Chair or by an Officer authorised by the Chair to sign on their 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 them at least three clear days before the meeting.

3.7 Want of service of the notice on any Director shall not affect the validity of a meeting.

- 3.8 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.9 Agendas will normally be sent to members 5 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.10 Before any meeting of the Board which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.
- 3.11 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.
- 3.12 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.13 **Petitions** - Where a petition has been received by the Trust the Chair of the Board shall include the petition as an item for the agenda of the next Board meeting.
- 3.14 **Chair of Meeting** - At any meeting of the Board, the Chair of the Board, if present, shall preside. If the Chair is absent from the meeting the Vice-Chair, if there is one and they are present, shall preside. If the Chair and Vice-Chair are absent such Non-Executive as the Directors present shall choose who shall preside.
- 3.15 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Vice-Chair, if present, shall preside. If the Chair and Vice-Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.
- 3.16 **Notices of Motion** - A Director of the Board desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This standing order shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.
- 3.17 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.18 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Board Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months. However, the Chair may do so if they consider it appropriate.
- 3.19 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.20 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

- 3.20.1 an amendment to the motion noting, that no amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion;
- 3.20.2 the adjournment of the discussion or the meeting;
- 3.20.3 that the meeting proceed to the next business; (*)
- 3.20.4 the appointment of an ad hoc committee to deal with a specific item of business;
- 3.20.5 that the motion be now put; (*)

Note in the case of sub-paragraphs 3.20.3 and 3.20.5 denoted by (*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

- 3.21 **Chair's Ruling** - Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.
- 3.22 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and [the voting](#) Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 3.23 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.24 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.25 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.26 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.27 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 formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.
- 3.28 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.29 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.30 Minutes shall be circulated in accordance with Director' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.
- 3.31 **Joint Directors** - Where the Office of a Director is shared jointly by more than one person:

- 3.31.1 Either or both of those persons may attend or take part in meetings of the Board:
- 3.31.2 If both are present at a meeting they should cast one vote if they agree:
- 3.31.3 In the case of disagreements no vote should be cast:
- 3.31.4 The presence of either or both of those persons should count as the presence of one person for the purposes of SO 3.39 (Quorum).
- 3.32 **Suspension of Standing Orders** - Except where the Standing Orders would contravene any statutory provision or any provision in the Constitution or the Terms of Authorisation, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 3.33 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.34 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Directors of the Board.
- 3.35 No formal business may be transacted while Standing Orders are suspended.
- 3.36 The Audit & Risk Committee shall review every decision to suspend Standing Orders.
- 3.37 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- 3.37.1 a notice of motion under Standing Order 3.16 has been given; and
- 3.37.2 no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and
- 3.37.3 at least two-thirds of the Board Directors are present; and
- 3.37.4 the variation proposed does not contravene any applicable Statutory provision or direction, the Constitution or the Terms of Authorisation, and
- subject always to the fact that no change shall be made without the prior consent of the Independent Regulator having first been obtained.
- 3.38 **Record of Attendance** - The names of the Chair and Directors present at the meeting shall be recorded in the minutes.
- 3.39 **Quorum** - No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and Directors appointed, (including at least one Non- Executive Director and one Executive Director) are present.
- 3.40 An Officer in attendance for an Executive Director but without formal acting up status and any Associate Non-Executive Directors or Non-Voting Executive Directors may not count towards the quorum.
- 3.41 If the Chair or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the recommendations of the Remuneration and Nominations Committee).

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to the Constitution, Terms of Authorisation or any relevant statutory provision, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:
- 4.1.1 by a committee, sub-committee or, [joint committee](#)
 - 4.1.2 appointed by virtue of Standing Order 5.1 or 5.2 below or by an Officer of the Trust,
 - 4.1.3 or by another body as defined in Standing Order 4.2 below,
- in each case subject to such restrictions and conditions as the Trust thinks fit.
- 4.2 Where a function is delegated to a third party [or to a joint committee](#), the Trust has responsibility to ensure that the proper delegation is in place. In other situations, i.e. delegation to committees, sub committees, [joint committees](#) or Officers, the Trust retains full responsibility.
- 4.3 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (Standing Order 2.4) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Executive Committee and the Board for ratification.
- 4.4 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, or joint- committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board.
- 4.5 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee or sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Officers to undertake the remaining functions for which they will still retain an accountability to the Trust.
- 4.6 **Powers of discharge** – where the Trust is exercising the powers of discharge under Section 45 of the Mental Health Act 2007 such powers may be exercised by three or more persons authorised by the Board of Directors in that behalf, each of whom is neither an Executive Director nor an employee of the Trust. This section should be read in conjunction with the Mental Health Act Scheme of Delegation in Section B: Scheme of Reservation and Delegation of Powers, Scheme of Delegation.
- 4.7 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation that shall be considered and approved by the Board as indicated above.
- 4.8 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with statutory or Independent Regulator requirements. Outside these requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 4.9 The arrangements made by the Board as set out in the Scheme of Delegation document shall have effect as if incorporated in these Standing Orders.
- 4.10 Not used.

- 4.11 **Overriding Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Directors of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive/Deputy Chief Executive as soon as possible.

5. COMMITTEES

- 5.1 Subject to the Constitution, (and to any guidance as may be given by [the Independent Regulator NHS England](#)), the Trust may appoint committees of the Trust, or together with one or more [relevant bodies, local authorities or combined authorities as defined in the 2006 Act](#) ~~Health Authorities or other Trusts~~, appoint joint committees, ~~consisting wholly or partly of the Chair and members of the Trust or other health service bodies or wholly of persons who are not members of the Trust or other health service bodies in question.~~
- 5.2 A committee or joint committee appointed under SO 5.1 may, subject to such directions as may be given the Trust or other ~~health service~~ bodies in question, appoint sub-committees consisting wholly or partly of members of the committee or joint committee (whether or not they are members of the Trust or other ~~health service~~ bodies in question); or wholly of persons who are not members of the Trust or other ~~health service~~ bodies or the committee of the Trust or other ~~health service~~ bodies in question.
- 5.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Trust. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Trust in public).
- 5.4 Each such 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 and shall be in accordance with any applicable legislation and regulation or direction. Such terms of reference shall have effect as if incorporated into the Standing Orders. A member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.
- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance (where appropriate).
- 5.7 Where the Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with the Constitution, the Terms of Reference and any applicable regulations and directions.
- 5.8 The committees, sub-committees, and joint-committees established by the Board are:

Audit & Risk Committee

As laid down in the Constitution and the 2006 Act, a committee of Non-Executive Directors will be established and constituted. Further details of the Audit & Risk Committee’s remit can be found in Standing Financial Instructions 2.1 and ~~in its the Audit & Risk Committee’s~~ Terms of Reference.

Remuneration and Nomination Committee

As laid down in the Constitution and the 2006 Act, a committee of Non-Executive Directors will be established to decide the remuneration and allowances of, and other terms and conditions of, the Executive Directors. Further details of the ~~Remuneration and Nominations~~ Committee can be found in Standing Financial Instructions 8.1 and ~~in its the Remuneration and Nomination Committee's~~ Terms of Reference.

Quality Assurance Committee

A committee of Non-Executive and Executive Directors established to provide assurance to the Board on the quality of care and treatment in all services provided by the Trust. Further details of the role and responsibility of the ~~Quality Assurance~~ Committee can be found in ~~the Quality Assurance Committee's~~ Terms of Reference.

Finance and Performance Committee

A committee of Non-Executive and Executive Directors established to maintain an overview of the Trust's financial processes, ensuring finances are managed within the allocated resources to deliver an efficient and effective service. Further details of the role and responsibility of the ~~Finance and Investment~~ Committee can be found in ~~its the Finance and Investment Committee~~ Terms of Reference.

~~Workforce and Organisation Development~~People Committee

A committee of Non-Executive Directors and Executive Directors established to provide assurance to the Board concerning all aspects of strategic and operational people matters, including workforce and organisational development relating to the provision of care and services in support of getting the best clinical outcomes and experience for patients and staff. Further details of the role and responsibility of the ~~Workforce and Organisation~~ Committee can be found in ~~its the Workforce and Organisation Committee~~ Terms of Reference.

Mental Health Legislation Committee

A committee of Non-Executive and Executive Directors established to ensure effective application and administration of the Mental Health Act (MHA), the Mental Capacity Act (MCA), including its Deprivation of Liberty Safeguards (DoLS) or, when they come into effect, Liberty Protection Safeguards (LPS) and any associated safeguarding matters, Human Rights Legislation and adherence to the associated Codes of Practice. Further details of the role and responsibility of the committee can be found in its terms of reference.

- 5.9 The Board have delegated authority to the ~~Executive Directors Group (EDG)~~Policy Governance Group (PGG) to ~~ratify approve~~ all policies and policy amendments reporting into assigned board committees for policy oversight and ratification. Those policies which have with the exception of those policies which have strategic board level content or are the responsibility of the board to approve are provided to. ~~Policies with strategic content will be referred by EDG to the~~ Board for final approval. Details of the delegated powers are included in the Scheme of Reservation and Delegation.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 **Declaration of Interests** - The Constitution, 2006 Act, the ~~NHS Foundation Trust~~ Code of Governance for NHS Provider Trusts and "Managing Conflicts of Interest in the NHS: Guidance for staff and organisations" (Gateway Ref. 06419, published February 2017) requires Board Directors to declare interests which are relevant and material to the NHS board of which they are a director. All existing Board Directors should declare such interests. Any Board Directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are:
- 6.2.1 Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
- 6.2.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;

- 6.2.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- (a) a position of trust in a charity or voluntary organisation in the field of health and social care;
 - (b) any connection with a voluntary or other organisation contracting for NHS services;

- (c) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to , lenders or banks;
- (d) interests in pooled funds that are under separate management;
- (e) research funding/grants that may be received by an individual or their department;
- (f) any other commercial interest in the decision before the meeting.

Interests can fall into the following categories:

- Financial interests;
- Non-financial professional interests;
- Non-financial personal interests; or
- Indirect interests

- 6.2.4 At the time Board 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.
- 6.2.5 Board 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.
- 6.2.6 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.2.7 The interest of Directors' spouses, if living together, in contracts should be declared. Therefore the interests of Board Directors' spouses and cohabiting partners should also be regarded as relevant.
- 6.2.8 If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chair. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

6.3 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board Directors. In particular the Register will include details of all directorships, other relevant and material interests and the category of interest which have been declared by both Executive and Non- Executive Directors, as defined in Standing Order 6.2.

6.4 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.

6.5 The Register will be available to the public in accordance with paragraph 36 and 37 of the Constitution 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.

6.6 All senior managers and clinicians have a duty to ensure that declaration of interests are made which could materially affect the outcome of decisions made by them. Where in doubt, all senior managers and clinicians should contact their respective Directors for

clarification. The staff register of interests will be kept up to date by means of an annual review.

- 6.7 The Trust's Managing Conflicts of Interest in the NHS Policy outlines in more detail the procedures to be followed in this area.

7. DISABILITY OF CHAIR AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Order, if the Chair or a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, they 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.
- 7.2 The Board may exclude the Chair or a Director of the Board from a meeting of the Board while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 7.3 Any remuneration, compensation or allowances payable to the Chair or a Director by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order the Chair or a Director shall be treated, subject to SO 7.5, as having an interest in a contract, proposed contract or other matter, if:
- 7.4.1 they, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 7.4.2 they are a partner of, or are in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
 - 7.4.3 and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 7.5 The Chair or a Director shall not be treated as having an interest in any contract, proposed contract or other matter by reason only:
- 7.5.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
 - 7.5.2 of an interest in any company, body or person with which they are connected as mentioned in SO 7.4 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.
- 7.6 Where the Chair or a Director has an 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 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 body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit them from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest.

- 7.7 The Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Trust and applies to a director of any such committee or sub-committee (whether or not they are also a Director of the Trust) as it applies to a Director of the Trust.

8. STANDARDS OF BUSINESS CONDUCT POLICY

- 8.1 Staff should have due regard to the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B), the Bribery Act and "Managing Conflicts of Interest in the NHS: Guidance for staff and organisations" (Gateway Ref. 06419, published February 2017). This section of Standing Orders should be read in conjunction with these documents. Additionally staff should comply with the Trust's Declaration of Interest and Standards of Business Conduct Policy.
- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of an Officer of the Trust that a contract in which they have any interest not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive of the fact that they are interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An Officer should also declare to the Chief Executive any other employment or business or other relationship of their, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 8.4 The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.
- 8.5 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.6 A Director of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.7 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.8 **Relatives of Directors or Officers** - Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 8.9 The Chair and every Director and Officer of the Trust shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- 8.10 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board whether they are related to any other Director or holder of any office in the Trust.
- 8.11 Where the relationship to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Chair and Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

9. TENDERING AND CONTRACT PROCEDURE

- 9.1 **Duty to comply with Standing Orders** - The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where Standing Order 3.32 is applied).
- 9.2 **EU Directives Governing Public Procurement** – the Trust will comply with, and have due regard to, ~~EU~~ UK Directives (and associated Regulations) governing public procurements.
- 9.3 The Trust shall comply as far as is practicable with the requirements of the Department of Health and Social Care “Capital regime, investment and property business case approval guidance for NHS providers” and “The efficient management of healthcare estates and facilities (HBN 00-08)” and shall consider the guidance “NHS Providers, guidance on transactions for NHS Foundation Trusts (published by Monitor in 2015)” and such other guidance as may be issued by the Independent Regulator from time to time in respect of capital investment and estate and property transactions. In the case of management consultancy contracts the Trust shall comply as far as is practicable with Department of Health and Social Care guidance “The Procurement and Management of Consultants within the NHS”.
- 9.4 **Formal Competitive Tendering** - The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the ~~DoH~~DHSC); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 9.5 Where the Trust elects to invite tenders for the supply of healthcare these Standing Orders shall apply as far as they are applicable to the tendering procedure.
- 9.6 Formal tendering procedures may be waived by Officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in 9.6.3 to 9.6.6 below) where:
- 9.6.1 The estimated expenditure or income does not, or is not reasonably expected to, exceed £~~350~~,000 (~~excluding~~including VAT), (this figure to be reviewed annually); or
- 9.6.2 where the supply is proposed under special arrangements negotiated by the Crown Commercial Services (CCS) or other recognised collaborative procurement organisations (e.g. NHS Supply Chain, North of England Commercial Procurement Collaborative) such arrangements must be complied with where overall benefits to the Trust can be demonstrated;
- 9.6.3 the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender;
- 9.6.4 specialist expertise is required and is available from only one source;
- 9.6.5 the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate;
- 9.6.6 there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.
- 9.6.7 where provided for in the capital regime, investment and property business case approve guidance for NHS providers.

- 9.7 The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.
- 9.8 Where it is decided that competitive tendering is not applicable and should be waived by virtue of 9.6.3 to 9.6.6 above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Trust in a formal meeting. Such reports shall be received by the Audit & Risk Committee.
- 9.9 Except where Standing Order 9.6, or a requirement under Standing Order 9.2, applies, the Trust shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, and in no case less than three firms/individuals, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 9.10 Subject to EU UK directives governing EU Public Sector procurements the Trust shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists compiled. Where in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive for approval (see Appendix A: Tendering Procedure).
- 9.11 Tendering procedures are set out in Appendix A to these Standing Orders. In addition the Board shall, when entering into contracts, comply with and / or have regard to:
- 9.11.1 The Trust Standing Orders, Scheme of Delegation, Standing Financial Instructions and Terms of Authorisation;
- 9.11.2 EU UK Directives and other statutory provisions;
- 9.11.3 Any relevant directions including the Capital Regime, Investment and Property Business Case Approval Guidance for the NHS, the Efficient Management of Healthcare Estates and Facilities (HBN 00-08) and guidance on the Procurement and Management of Consultants;
- 9.11.4 Such of the NHS Standard Contract Conditions as are applicable (as amended to take into account the Trust's Foundation Trust status);
- 9.11.5 Contracts with Foundation Trusts must be in a form compliant with appropriate NHS guidance;
- 9.11.6 Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited;
- 9.11.7 In all contracts made by the Trust, the Board shall endeavour to obtain best value for money by use of all systems in place. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.
- 9.12 **Quotations** - are required where formal tendering procedures are waived under Standing Order 9.5 9.6.1 or 9.6.3 and where the intended expenditure or income exceeds, or is reasonably expected to exceed £10,000 (~~including~~ excluding VAT).
- 9.13 Where quotations are required under Standing Order 9.12 they should be obtained from at least three firms/individuals as per Appendix A based on specifications or terms of reference prepared by, or on behalf of, the Trust.
- 9.14 All qQuotations must ~~should~~ be in writing (including electronic means), unless the Chief Executive or their nominated Officer determine that it is impractical to do so, in which case telephone quotations ~~may~~ can be obtained by telephone. The Trust will only honour telephone quotations if followed up as soon as possible. ~~Confirmation of telephone quotation should be obtained as soon as possible~~

and the reasons why the telephone quotation was obtained should be set out in a permanent record.

- 9.15 All quotations should be treated as confidential and should be retained for inspection.
- 9.16 The Chief Executive or their nominated Officer should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 9.17 Non-competitive quotations in writing may be obtained for the following purposes:
- 9.17.1 the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or their nominated Officer, possible or desirable to obtain competitive quotations;
- 9.17.2 the goods/services are required urgently.
- 9.18 Authorisation of Tenders and Competitive Quotations:
- Providing all the conditions and circumstances set out in the Standing Financial Instructions have been fully complied with, formal authorisation and awarding of a contract may be decided by the staff and the contract signed, to the value of the contact in accordance with the Scheme of Delegation (see Appendix A)
- 9.19 Where tenders or quotations are not required, because expenditure is below £10,000 (including excluding VAT), the Trust shall procure goods and services in accordance with procurement procedures approved by the Trust.
- 9.20 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering (Standing Order 11).
- 9.21 **Private Finance** – Where the Trust proposes to market test for PFI (Private Finance Initiative Funding) when considering a capital procurement the following should apply:
- 9.21.1 The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector. Reports will be received by the Audit & Risk Committee.
- 9.21.2 The Trust will give full Board consideration to the scheme, which must be specifically agreed by the Board.
- 9.21.3 The Board will consider the Independent Regulator's guidance on "Roles and responsibilities in the approval of NHS foundation trust PFI schemes", the Independent Regulator's Compliance Framework, and any other Department of Health and/or HM Treasury requirements.
- 9.21.4 The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.
- 9.22 **Contracts with Commissioners** – The Chief Executive, as Accounting Officer is responsible for ensuring the Trust enters into suitable legally binding contracts with service commissioners for the provision of services. Contracts with commissioners are legally binding and appropriate legal advice identifying the Trust's liabilities within the terms of the contract should be considered.
- 9.23 The Board will approve standard terms and conditions for legally binding contracts on the basis of which the Trust will provide healthcare and other services.
- 9.24 Cancellation of Contracts Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the NHS (as

amended to take into account the Trust's Foundation Trusts status) and in accordance with Standing Orders 9.2 and 9.3, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by them or acting on their behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by them or acting on their behalf shall have committed any offence under the ~~Prevention of Corruption Acts 1889 and 1916~~ [Bribery Act 2010](#) and other appropriate legislation.

- 9.25 **Determination of Contracts for Failure to Deliver Goods or Material** – There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.
- 9.26 **Contracts involving Funds Held on Trust** – shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Act.
- 9.27 **Personnel and Agency or Temporary Staff Contracts** – The Chief Executive shall nominate officers with delegated authority to enter into contracts for the employment of other officers, to authorise re-grading of staff and to enter into contracts for the employment of agency staff or temporary staff.

10. DISPOSALS

- 10.1 Competitive tendering or quotation procedures shall not apply to the disposal of:
- 10.1.1 any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or their nominated Officer;
 - 10.1.2 obsolete or condemned articles and stores, which may be disposed of in accordance with the disposal policy of the Trust;
 - 10.1.3 items to be disposed of with an estimated sale value of less than £500, this figure to be reviewed annually;
 - 10.1.4 items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
 - 10.1.5 land or buildings concerning which ~~DoH~~ [DHSC](#) guidance has been issued, where the Trust wishes to adhere to such guidance as a matter of good practice.

11. IN-HOUSE SERVICES

- 11.1 In all cases where the Board determines that in-house services should be subject to competitive tendering the following groups shall be set up:

- 11.1.1 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided on an in-house basis. The Trust may also determine from time to time that in-house services should be market tested by competitive tendering.
- 11.1.2 Specification group, comprising the Chief Executive or nominated Officer/s and specialist.
- 11.1.3 In-house tender group, comprising a nominee of the Chief Executive and technical support.
- 11.1.4 Evaluation team, comprising normally a specialist officer, a procurement officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £500,000 (including VAT), a Non-Executive Director should be a Director of the evaluation team.
- 11.2 All groups should work independently of each other and individual Officers may be a Director of more than one group but no Director of the in-house tender group may participate in the evaluation of tenders.
- 11.3 The evaluation team shall make recommendations to the Board.
- 11.4 The Chief Executive shall nominate an Officer to oversee and manage the contract on behalf of the Trust.

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 12.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Chief Executive or designated Officer in a secure place.
- 12.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee, thereof or where the Board has delegated its powers.
- 12.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an Officer nominated by them) and authorised and countersigned by the Chief Executive (or an Officer nominated by them who shall not be within the originating directorate).
- 12.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

13. SIGNATURE OF DOCUMENTS

- 13.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.
- 13.2 The Chief Executive or nominated Officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee, sub-committee or standing committee with delegated authority.

14. MISCELLANEOUS

- 14.1 **Standing Orders to be given to Directors and Officers** - It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing

Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated Officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

- 14.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated into Standing Orders.
- 14.3 **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 14.4 **Contracts to purchase from a voluntary organisation or a local authority** – The Board may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under ~~Section 256~~ [s.75](#) of the ~~2006~~ Act. The Board may confirm contracts to transfer money from the NHS to the voluntary sector or the health related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services, using its powers under Section 256 of the 2006 Act, and shall comply with procedures laid down by the Director of Finance which shall be in accordance with this Act.

APPENDIX A

1. INVITATION TO TENDER

- 1.1 All invitations to tender on a formal competitive basis must be submitted via the In-Tend online portal.
- 1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.
- 1.3 Every tender for building and engineering works, except for maintenance work only where EstateCode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DoH.
- 1.4 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

2. RECEIPT, SAFE CUSTODY AND RECORD OF FORMAL TENDERS

- 2.1 Formal competitive tenders shall be addressed to the Chief Executive.
- 2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package.
- 2.3 The Chief Executive shall designate an Officer or Officers, not from the originating department, to receive tenders on their behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3 (Opening Formal Tenders).
- 2.4 Electronic Tenders – An auditable date / time stamp of all actions is automatically created through the agreed e-tendering service. This audit trail is available for review in real-time by all officers with appropriate access rights and cannot be edited.

3. OPENING FORMAL TENDERS

- 3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior Officers designated by the Chief Executive and not from the originating department.
- 3.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening.
- 3.3 A permanent record shall be maintained to show for each set of competitive tender invitations despatched:
 - 3.3.1 The names of firms/individuals invited;
 - 3.3.2 The names of and the number of firms/individuals from which tenders have been received;

- 3.3.3 The total price(s) tendered;
 - 3.3.4 Closing date and time;
 - 3.3.5 Date and time of opening;
 - 3.3.6 And the persons present at the opening shall sign the record.
- 3.4 Except as in Section 3.5 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialled by two of those present at the opening.
- 3.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure Section 3.4 unreasonable.
- 3.6 Electronic Tenders – The Chief Executive will designate and agree a list of officers who will be able to access the electronic tenders and release them once the time and date for opening has passed.

An auditable log of actions, which may not be edited, is created including, but not limited to:

Procurement actions:

- Time / date stamp of “publication” to tender by buyer
- Time / date stamp of any amendments to a “publication” tender (e.g. if any buyer tender document attachments are added / amended during the process)
- Time / date stamp of any buyer messages communicated via the integrated messaging area (including the content, which suppliers received the message, when it was opened etc.). All messages are delivered in a “blind copy” format to ensure suppliers cannot view who else has received the message
- Time / date stamp of opening information including buyer name by time / date stamp by individual response envelope
- Time / date stamp of confirmation of buyer acceptance of supplier bids
- Time / date stamp of confirmation of buyer acceptance of supplier evaluation scores
- Time / date stamp of confirmation of buyer award decisions

Supplier actions:

- Time / date stamp of initial registration within the e-tendering service
- Time / date stamp by supplier of when the specific tender was first accessed
- Time / date stamp of any supplier messages communicated via the integrated messaging area (including the content, which buyer received the message, when it was opened etc.)
- Time / date stamp or any individual components of a “published” tender accessed e.g. buyer tender document attachments
- Time / date stamp of official “submission” of tender response.

4. ADMISSIBILITY AND ACCEPTANCE OF FORMAL TENDERS

- 4.1 In considering which tender to accept, if any, the designated Officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.
- 4.2 Tenders received after the due time and date may be considered only if the Chief Executive or nominated Officer decides that there are exceptional circumstances, e.g. where significant financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or nominated Officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the Board at its next meeting.
- 4.3 Technically late tenders (i.e. those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.
- 4.4 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon their own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.
- 4.5 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing their offer.
- 4.6 Necessary discussions with a tenderer of the contents of their tender, in order to elucidate technical points etc., before the award of a contract, need not disqualify the tender.
- 4.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an Officer designated by the Chief Executive.
- 4.8 Where only one tender/quotation is received the Chief Executive shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.9 A tender other than the lowest (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason the Board decides otherwise and record that decision in their minutes and in the record referred to in 3.3 above.
- 4.10 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated Officer.
- 4.11 All Tenders should be treated as confidential and should be retained for inspection.

5. LIST OF APPROVED FIRMS

- 5.1 In accordance with Standing Order 9.10 the Trust shall compile, or procure from another health body or organisation, lists of approved firms and individuals from whom tenders and quotations may be invited. The Finance Director shall keep and maintain these under review subject always to EU directives governing EU procurement. Where compiled by the Trust, the lists shall be selected from all firms who have applied for permission to tender or quote provided:

- 5.1.1 In the case of building, engineering and maintenance works, the Chief Executive is satisfied on their capacity, conditions of labour, etc., and that the Director of Finance is satisfied that their financial standing is adequate.
- 5.1.2 In the case of the supply of goods, materials and related services, and consultancy services the Chief Executive or the nominated Officer is satisfied as to their technical competence etc., and that the Director of Finance is satisfied that their financial standing is adequate.
- 5.1.3 In the case of the provision of healthcare services to the Trust by a private sector provider, the Director of Finance is satisfied as to their financial standing and the Medical Director (or nominated representative) is satisfied as to their technical/medical competence.
- 5.2 The Chief Executive shall arrange for advertisements to be issued as may be necessary, and not less frequently than every third year, in trade journals and national newspapers inviting applications from firms for inclusion in the prescribed lists.
- 5.3 If in the opinion of the Chief Executive and the Director of Finance it is impractical to use a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.

A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list

6. Authorisation of Tenders and Competitive Quotations:

Providing all the conditions and circumstances set out in the Standing Financial Instructions have been fully complied with, formal authorisation and awarding of a contract may be decided by the staff and the contract signed, to the value of the contact in accordance with the Scheme of Delegation (see Appendix A)

- Designated Budget Holders up to £4,999;
- Authorised Budget Holders / Managers (per SoD) up to £9,999;
- Head of Contracting / Procurement up to £9,999 (i.e. as per Scheme of Delegation);
- Deputy Director of Finance up to £99,999;
- Chief Executive, Deputy Chief Executive and Director of Finance (with Business Planning Group approval) up to £249,999;
- Two from Chief Executive, Deputy Chief Executive or Director of Finance (with Executive Director Group approval) up to £1million;
- Two from Chief Executive, Deputy Chief Executive or Director of Finance (with Finance and Performance Committee approval) up to £1million;
- Two from Chief Executive, Deputy Chief Executive or Director of Finance (with Trust Board approval) over £2million.

These levels of authorisation may be varied or changed and need to be read in conjunction with the Trust Board's Scheme of Delegation.

Where tenders or quotations are not required, because expenditure is below £10,000, the Trust shall procure goods and services in accordance with procurement procedures approved by the Trust.

CORE CONSTITUTION

ANNEX 9

Further Provisions

FURTHER PROVISIONS

1. ELIGIBILITY FOR MEMBERSHIP

- 1.1 An individual shall not be eligible for Membership of the Trust if they:
- 1.1.1 are less than 12 years of age at the time of the application to become a Member;
 - 1.1.2 fail or cease to fulfil the criteria for Membership of any of the constituencies;
 - 1.1.3 were formerly employed by the Trust ~~or the Applicant NHS Trust~~ and were dismissed for gross misconduct;
 - 1.1.4 were formerly employed by the Trust ~~or the Applicant NHS Trust~~ and in the preceding two years were lawfully dismissed other than by reason of redundancy;
 - 1.1.5 have been placed on the registers of Schedule 1 Offenders pursuant to the Sex Offenders Act 1977 and/or the Children & Young Person's Act 1937 and their conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 1.1.6 have, following a Disclosure and Barring Service check, it is established that it would be inappropriate, in the reasonable opinion of the Chief Executive, for them to become or continue as a Governor on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
 - 1.1.7 do not agree to abide by the Trust principles;
 - 1.1.8 in the five years prior to their application, have been involved as a perpetrator in a serious incident of violence or harassment of people working for the Trust or any other Health Service Body or any service users or carers of or visitors to the Trust or any other Health Service Body consistent with the Trust's Zero Tolerance Policy;
 - 1.1.9 are as deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust;
 - 1.1.10 have been excluded from the Trust's premises; or
 - 1.1.11 are a vexatious complainant as determined by the Secretary.
 - ~~1.1.11~~1.1.12 are in dispute with, or have been removed as a member, from another Foundation Trust.
- 1.2 It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from Membership, the Trust shall carry out all reasonable enquiries to establish if this is the case.

Public Constituency

- 1.3 For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if;
- 1.3.1 their name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
 - 1.3.2 the Trust is otherwise satisfied that the individual lives in the said area.
- 1.4 An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if they cease to live in the area of the Public Constituency of which they are a Member save as may otherwise be provided in this paragraph 1.

- 1.5 Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which they are a Member they shall forthwith advise the Trust that they are no longer eligible to continue as a Member and the Trust shall forthwith remove their name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than 14 days notice of its intention to do so.
- 1.6 Where a Member ceases to live temporarily in the area of the Public Constituency of which they are a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in the area of that Public Constituency of which they are a Member or will live in some other part of the Area of the Trust in which case the provisions of paragraph 1.4 shall apply as appropriate.

Staff Constituency

- 1.7 A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 8 of the Constitution and Annex 2.
- 1.8 Where an individual is a Member by virtue of their eligibility to be a Member of a Staff Class and they cease to be eligible for Membership of that Staff Class but are eligible for Membership of some other Staff Class then the Trust may give notice to that Member of its intention to transfer them to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

Service Users and Carers' Constituency

- 1.9 A Member of the Service Users and Carers' Constituency shall cease to be eligible for Membership unless they have at all times since becoming a Member attended one of the Trust's services as a Service User or Carer, as the case may be, within the preceding five years.
- 1.10 Where in the reasonable opinion of the Trust an individual is no longer eligible to continue as a Member of the Service Users and Carers' Constituency it shall be at liberty to remove an individual from the Register of Members and that individual shall thereupon cease to be a Member of the Trust. However, this power may not be exercised until the Trust has given not less than 14 days written notice to that Member addressed to them at the address given in the Register of Members of its intention to remove them from the Register of Members and that Member has not within that period notified the Trust of their wish to continue as a Member.

2. APPLICATION FOR MEMBERSHIP

- 2.1 An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a member of a Staff Class of the Staff Constituency in accordance with paragraph 8 of the Constitution.
- 2.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply:
- 2.2.1 the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;

- 2.2.2 upon receipt of the said form of application duly completed by the applicant, the Trust shall as soon as is reasonable practicable and in any event within twenty-eight working days of receipt of the duly completed form consider the same;
- 2.2.3 unless the applicant is ineligible for Membership or is disqualified from Membership, the Trust shall cause their name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;
- 2.2.4 upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a Member;
- 2.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that Member:
 - (a) their full name and title;
 - (b) their date of birth;
 - (c) their full postal address;
 - (d) their home telephone number (if any);
 - (e) their email address (if any);
 - (f) the constituency of which they are a Member, and, where there are classes within it, the Class to which they belong;
 - (g) the date upon which they became a Member;
 - (h) their gender and ethnicity, and
 - (i) their affiliation to any health and social care group.
- 2.3 Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:
 - 2.3.1 the Trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a Member of the Staff Class of the Staff Constituency relevant to them before inviting them to become a Member of the Trust and that it has all the information needed to complete the Register of Members in accordance with paragraph 2.2.5 above;
 - 2.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph 6 of the Constitution and if necessary shall request the individual to provide such further information, if any, as it may need to complete the necessary entry in the Register of Members;
 - 2.3.3 unless the individual has within twenty-eight days of the date upon which the Trust dispatches its invitation to them to become a Member advised the Trust that they do not wish to become a Member, the Trust shall thereupon enter that individual's name on the Register of Members and they shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to paragraph 2.2.5 to enable it to complete the relevant entry in the Register of Members;
 - 2.3.4 if the individual has failed to provide the information requested by the Trust within fourteen days of being invited by the Trust to provide it in accordance with paragraph 2.2.5 above, the Trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the Register of Members.

- 2.4 No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.
- 2.5 For the avoidance of doubt, an individual shall become a Member on the date upon which their name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which their name is removed from the Register of Members as provided for in this Constitution.
- 2.6 The Trust shall procure that the Register of Members and all other Registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the Register of Members in particular is reviewed and updated as appropriate and no less often than every twenty eight days.

3. TERMINATION OF MEMBERSHIP

- 3.1 A Member shall cease to be a Member if:
- 3.1.1 they resign by notice to the Company Secretary;
 - 3.1.2 they die;
 - 3.1.3 they are expelled from Membership under this constitution;
 - 3.1.4 it appears to the Company Secretary that they no longer wish to be a Member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a Member of the Trust;
 - 3.1.5 they cease to be entitled under this Constitution to be a Member of any of the Public Constituencies or one of the Classes of the Service Users and Carers' Constituency or one of the Classes of the Staff Constituency.

4. MEMBERS MEETINGS

- 4.1 The Trust shall hold a Members' Meeting for all the Members (called the Annual Members' Meeting) which is to be held no later than the 30 September in each Financial Year of the Trust.
- 4.2 Any Members' Meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".
- 4.3 Members' Meetings shall be open to all Members of the Trust, members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors and to members of the public. The Trust may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend a Members' Meeting.
- 4.4 All Members' Meetings are to be convened by the Company Secretary by order of the Board of Directors.
- 4.5 The Trust shall make provision for the Members' Meeting to be held at different venues whether simultaneously or at different times.
- 4.6 The Board of Directors shall present at the Annual Members' Meeting to the Members:
- 4.6.1 a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such Membership;
 - 4.6.2 the progress of the Membership strategy;
 - 4.6.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors;

4.6.4 the results of the election and appointment of Governors any other reports or documentation it considers necessary or otherwise required by the Independent Regulator or the 2006 Act.

4.6.4

- 4.7 The Trust shall give notice of all Members' Meetings:
- 4.7.1 by notice in writing to all Members;
 - 4.7.2 by notice prominently displayed at the Trust's main address and at all of the Trust's principal places of business;
 - 4.7.3 by notice on the Trust's website at least fourteen clear days before the date of the meeting;
 - 4.7.4 to the Council of Governors and the Board of Directors, and to the Trust's auditors stating whether the meeting is an Annual or Special Members' Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting.
- 4.8 The Chair or in their absence the Vice Chair shall preside at all Members' Meetings of the Trust. If neither the Chair nor the Vice Chair is present, the Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act that person shall be Chair. If no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chair.

4A VOTING AT GOVERNOR ELECTIONS

4A.1 A Member may not for the purpose of section 60 of the 2006 Act vote at an election for a Public Governor or Service User and Carer Governor unless within the specified period they have made a declaration in the specified form stating the particulars of their qualification to vote as a Member of the Public constituency or Class of the Service User and Carers' Constituency for which an election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in material particular.

5. BOARD OF DIRECTORS: DISQUALIFICATION

- 5.1 In addition to the grounds of disqualification set out in paragraph 26 of the Constitution, a person may also not be or continue as a Director of the Trust if:
- 5.1.1 in the case of a Non-Executive Director, they no longer satisfy relevant appointment requirements;
 - 5.1.2 they are a person whose tenure of office as a Chair or as a Member or Director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of public service, or for non-disclosure of a financial interest;
 - 5.1.3 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a health service body;
 - 5.1.4 information revealed by a Disclosure and Baring check is such that it would be inappropriate for them to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
 - 5.1.5 in the case of an Executive Director, they are no longer employed by the Trust.

6. GOVERNORS AND DIRECTORS: COMMUNICATION AND CONFLICT

Summary

- 6.1 This paragraph 6 describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal and formal communications between the Council of Governors and the Board of Directors.

Informal Communications

- 6.2 Informal and frequent communication between the Governor and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 6.3 The Chair shall use their reasonable endeavours to encourage effective informal methods of communication including:
- 6.3.1 participation of the Board of Directors in the induction, orientation and training of Governors;
 - 6.3.2 development of special interest relationships between Non-Executive Directors and Governors;
 - 6.3.3 discussions between Governors and the Chair and/or the Chief Executive and/or Directors through the office of the Chief Executive or their nominated Officer;
 - 6.3.4 involvement in membership recruitment and briefings at public events organised by the Trust.
- 6.4 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

Formal Communication

- 6.5 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:
- 6.5.1 specific requests by the Council of Governors will be made through the Chair to the Board of Directors;
 - 6.5.2 any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chair but if the Chair declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve their request to do so. The Chair shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;
 - 6.5.3 joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate as determined by the Chair (in their capacity as the Chair of both the Board of Directors and the Council of Governors).
- 6.6 The Board of Directors may request the Chair to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 6.7 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:
- 6.7.1 the Board of Directors proposals for the Strategic Direction and the Annual Business Plan;
 - 6.7.2 the Board of Directors' proposals for developments;
 - 6.7.3 Trust performance;

- 6.7.4 involvement in service reviews and evaluation relating to the Trust's services; and
- 6.7.5 proposed changes, plans and developments for the Trust other than may be covered by paragraph 6.6 above.
- 6.8 The Board of Directors shall also present to the Council of Governors the Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act.
- 6.9 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:
 - 6.9.1 attendance by the Board of Directors at a meeting of the Council of Governors;
 - 6.9.2 provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors;
 - 6.9.3 inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
 - 6.9.4 reporting the views of the Council of Governors to the Board of Directors through the Chair or Vice Chair.

Other Disputes

- 6.10 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other Officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.
- 6.11 The Chief Executive (or their nominated representative) shall:
 - 6.11.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;
 - 6.11.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which they have considered; and
 - 6.11.3 communicate their decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

~~6.12 Where a Governor is declared ineligible or disqualified from office or their term of office as a Governor has been terminated (otherwise than as a consequence of their own resignation) and that person disputes the decision, they shall as reasonably practicable be entitled to attend a meeting with the Chair and Chief Executive of the Trust, who shall use their best endeavours to facilitate such a meeting, to discuss the decision with a view to resolving any dispute which may have arisen, but the Chair and Chief Executive shall not be entitled to rescind or vary the decision which has already been taken.~~

Resolution of Disputes between the Board and Council of Governors

~~6.13~~ 6.12 Should a dispute between the Council of Governors and the Board of Directors arise then the disputes resolution procedure set out below recognises the different roles of the Council and the Board as described in the Constitution.

~~6.13~~ 6.12.1 The Chair, or Vice Chair (if the dispute involves the Chair) 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.

~~6.13.26.12.2~~ Failing resolution under 6.13.1 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.

~~6.13.36.12.3~~ The Chair 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.

~~6.13.46.12.4~~ The Chair or Vice Chair (if the dispute involves the Chair) 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 above shall be repeated.

~~6.13.56.12.5~~ If, in the opinion of the Chair or Vice Chair (if the dispute involves the Chair), and following the further discussions prescribed above there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Vice Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council and Board accordingly.

~~6.13.66.12.6~~ On the satisfactory completion of this disputes process the Board of Directors shall implement agreed changes.

~~6.13.76.12.7~~ On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.

~~6.146.13~~ Nothing in this procedure shall prevent the Council, if it so desires, from informing ~~the Independent Regulator~~[NHS England](#) that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting its Terms of Authorisation.

7. REVIEW OF CONSTITUTION

7.1 The Constitution shall be reviewed on the first anniversary of the Trust's authorisation as an NHS Foundation Trust or as soon as reasonably practicable thereafter. Further review dates shall be established at that time.

8. INDEMNITY

8.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Council or Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with ~~the National Health Service Litigation Special Health Authority~~[NHS Resolution](#) to cover such costs.

9. VALIDITY OF ACTIONS

9.1 No defect or deficiency in the appointment or composition of the Council of Governors or the Board of Directors shall affect the validity of any action taken by them.