
**CONSTITUTION OF
UNIVERSITY HOSPITALS BRISTOL
NHS FOUNDATION TRUST**

28 November 2013

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UNIVERSITY HOSPITALS BRISTOL NHS FOUNDATION TRUST CONSTITUTION

1. INTERPRETATION AND DEFINITIONS

- 1.1 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 2012 Act.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.3 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.
- 1.4 References to legislation include all regulations, statutory guidance and directions.
- 1.5 Headings are for ease of reference only and are not to affect interpretation.
- 1.6 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.
- 1.7 All Annexes referred to in this Constitution form part of it.
- 1.8 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an Annex to this Constitution it shall be a reference to a paragraph in that Annex unless the contrary is expressly stated or the context otherwise so requires.
- 1.9 In this Constitution:

“Accounting Officer”	means the person who from time to time discharges the functions specified in paragraph 25 of Schedule 7 to the 2006 Act;
“Applicant NHS Trust”	means The United Bristol Healthcare NHS Trust;
“the 2006 Act”	means the National Health Service Act 2006;
“the 2012 Act”	means the Health and Social Care Act 2012
“Annual Members’ Meeting”	means the annual meeting of all the Members;
“Appointed Governors”	means the Local Authority Governor, the University Governors and the Partnership Governors;
“Area of the Trust”	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
“Authorisation”	means the authorisation of the Trust by Monitor under Section 35 of the 2006 Act;
“Board of Directors”	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 25 and “Board” shall be construed

accordingly;

“Carer”	means an individual who (1) provides care to a Patient and has attended any of the Trust’s Hospitals as the carer of that Patient within the period of three years immediately before the date of that individual’s application to become a Member of the Patient 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; and (2) who has at all subsequent times attended a Trust Hospital as the carer of that Patient on at least one occasion within the preceding three year period;
“Chair”	means the Chair of the Trust appointed in accordance with paragraph 27 or paragraph 28 of this Constitution;
“Chief Executive”	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with paragraphs 30 or 31 of this Constitution;
“Constituencies”	means the Public Constituencies, the Staff Constituency and the Patients and Carers Constituency;
“Constitution”	means this Constitution of University Hospitals Bristol NHS Foundation Trust;
“Council of Governors”	means the Council of Governors of the Trust as constituted in accordance with this Constitution;
“Deputy Chair”	means the Deputy Chair of the Trust;
“Director”	means a Director on the Board of Directors;
“Elected Governors”	means the Public Governors, the Patients and Carers Governors and the Staff Governors;
“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 Finance Director of the Trust;
“Financial Year”	means:- (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 st March; and (b) each successive period of twelve months beginning with 1 st April;
“Governor”	means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;

“Health Service Body”	means a body which is a health service body for the purpose of Section 9(4) of the 2006 Act;
“Licence”	means the NHS provider licence issued to the Trust by Monitor pursuant to Section 88 of the 2012 Act;
“Local Authority”	means the local authority specified in Annex 4, which is a local authority for an area which includes the whole or part of the Area of the Trust;
“Local Authority Governor”	means the member of the Council of Governors appointed by the Local Authority in accordance with the provisions of this Constitution and as specified in Annex 4;
“Member”	means a Member of the Trust as determined in accordance with paragraph 6 and paragraph 9 of this Constitution;
“Membership”	means Membership of the Trust through being a Member of one of its constituencies;
“Members’ Meetings”	means a meeting of the Members;
“Membership Manager”	means the person appointed by the Trust to manage the membership;
“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”	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
“NHS Foundation Trust Code of Governance”	means the Code of Governance published by Monitor on 10 March 2010 or such similar or further guidance as Monitor may publish from time to time;
“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 Organisations”	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 4;
“Patients”	means a person within the definition at paragraph 10.3 of this Constitution;
“Patients and Carers Classes”	means the classes of the Patient and Carers Constituency as specified in Annex 3;
“Patients and Carers Governor”	means a member of the Council of Governors elected by the Members of the Patients and Carers Constituency;

“Patients and Carers Constituency”	means that part of the Trust’s Membership which consists of Patients and Carers;
“Public Governor”	means a member of the Council of Governors elected by the Members of a Public Constituency;
“Public Constituencies”	means a public constituency of the Trust as defined in Annex 1;
“Secretary”	means the secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust;
“Senior Independent Director”	means a Non-Executive Director nominated to the role of Senior Independent Director in accordance with the provisions of this Constitution;
“Significant Transaction”	is defined in paragraph 46.2 of this Constitution;
“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 at paragraph 8 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;
“the Trust”	means University Hospitals Bristol NHS Foundation Trust;
“Trust’s Hospital”	means any premises used by the Trust for the provision of goods and services for the purposes of the health service in England falling within the definition of “hospital” in Section 275 of the 2006 Act;
“University Governor”	means each member of the Council of Governors appointed in accordance with the provisions of this Constitution by the Universities specified in paragraph 2.5 of Annex 4;
“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 Trust is a Public Benefit Corporation authorised under the National Health Service Act 2006. The name of the foundation trust shall be University Hospitals Bristol 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 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. POWERS

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All 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.

5. MEMBERSHIP AND CONSTITUENCIES

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

- 5.1 a Public Constituency;
- 5.2 the Staff Constituency; or
- 5.3 the Patients 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 9.
- 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 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 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 he has 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 minimum of 50% of their contracted hours or 16 hours per week, whichever is the lesser, is spent providing services to the Trust, and are acknowledged in writing by the Trust as so doing for the purposes of this paragraph;
 - 8.2.2 individuals who work on behalf of a voluntary organisation within the meaning of the 2006 Act or who are registered volunteers at the Trust and are in either case acknowledged in writing by the Trust as so doing for the purposes of this paragraph; and
 - 8.2.3 academic staff under an honorary contract with the Trust whose place of work is the Trust and who are acknowledged in writing by the Trust as being under such a contract for the purposes of this paragraph
- 8.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this paragraph 8 are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into four 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.

9. AUTOMATIC MEMBERSHIP BY DEFAULT AND BY APPLICATION – STAFF

- 9.1 An individual who:
 - 9.1.1 is eligible to become a Member of the Staff Constituency pursuant to paragraph 8.1 above, and

- 9.1.2 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 he informs the Trust that he does not wish to do so.

- 9.2 An individual who:

- 9.2.1 is eligible to become a Member of the Staff Constituency pursuant to paragraph 8.2 above, and

- 9.2.2 has made an application to 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.

- 9.3 The process by which an individual shall be invited or shall apply to become a Member of the Staff Constituency shall be in accordance with the provisions of Annex 9.

10. PATIENTS AND CARERS CONSTITUENCY

- 10.1 An individual who has, within the period specified below, attended any of the Trust's Hospitals as either a Patient or as the Carer of a Patient may become or continue as a Member of the Trust.

- 10.2 The period referred to above shall be the period of 3 years immediately preceding the date of the application by the Patient or Carer to become a Member of the Trust and the period of 3 years at all times thereafter in order to continue to be eligible as a Member of the Trust.

- 10.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions are referred to collectively as the Patient and Carers Constituency.

- 10.4 The Patients and Carers Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Patients and Carers Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Patients and Carers Constituency.

- 10.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation or as a volunteer for a voluntary organisation does not come within the category of those who qualify for Membership of the Patients and Carers Constituency.

- 10.6 The minimum number of Members in each class of in the Patients and Carers Constituency is specified in Annex 3.

- 10.7 Where an individual is eligible to be a Member both of a Public Constituency and of the Patients and Carers Constituency he shall automatically become a member of the Patients and Carers Constituency and, where applicable, the relevant class of that Constituency unless he informs the Trust in writing that he wishes instead to become a member of the Public Constituency.

11. RESTRICTION ON MEMBERSHIP

- 11.1 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.

- 11.2 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.
- 11.3 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.

12. ANNUAL MEMBERS' MEETING

The Trust shall hold an Annual Members' Meeting in accordance with paragraph 4 of Annex 9. The Annual Members' Meeting shall be open to members of the public.

13. COUNCIL OF GOVERNORS – COMPOSITION

- 13.1 The Trust shall have a Council of Governors which shall comprise both Elected and Appointed Governors.
- 13.2 The composition of the Council of Governors shall be as specified in Annex 4.
- 13.3 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.
- 13.4 The number of Governors to be elected by each constituency or, where appropriate, by each class of each constituency is specified in Annex 4.

14. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 14.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution. The Model Election Rules current at the date of the trust's Authorisation are attached at Annex 5.
- 14.3 A subsequent variation of the Model Election Rules by the Department of Health shall **not** constitute a variation of the terms of this Constitution for the purposes of paragraph 45.1 of the Constitution (amendment of the Constitution).
- 14.4 An election, if contested, shall be by secret ballot.

15. COUNCIL OF GOVERNORS – TENURE

- 15.1 An Elected Governor shall hold office for a period of 3 years.
- 15.2 An Elected Governor shall cease to hold office if he ceases to be a Member of the constituency or class by which he was elected.
- 15.3 An Elected Governor shall be eligible for re-election at the end of his term, subject to the provisions of paragraph 1.2 of Annex 6.
- 15.4 An Appointed Governor shall hold office for a period of 3 years and shall be eligible for re-appointment at the end of that term, subject to the provisions of paragraph 1.2 of Annex 6.
- 15.5 Further provisions relating to a Governor's tenure of office are set out in Annex 6.

16. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

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

17. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 17.1 The general duties of the Council of Governors are:
 - 17.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
 - 17.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.
- 17.2 The Trust must take steps to secure that the Council of Governors are equipped with the skills and knowledge they require in their capacity as such.

18. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 18.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 27 or paragraph 28 below) or, in his absence, the Deputy Chair appointed in accordance with the provisions of paragraph 29 below, shall preside at meetings of the Council of Governors.
- 18.2 The Council of Governors may invite any non-voting advisors to attend a meeting of the Council of Governors.
- 18.3 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.
- 18.4 For the purposes of obtaining information about the Trust's performance of its functions or the Directors performance of their duties (and deciding whether to propose a vote on the Trust's or Directors performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.

19. COUNCIL OF GOVERNORS – STANDING ORDERS

The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 7.

20. COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL

20.1 In this paragraph, the “Panel” means a panel of persons appointed by Monitor to which a member of the Council of Governors may refer a question as to whether the Trust has failed or is failing:

20.1.1 to act in accordance with this Constitution, or

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

20.2 A member of the Council of Governors may refer a question to the Panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

21. COUNCIL OF GOVERNORS – CONFLICTS OF INTEREST OF GOVERNORS

21.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered or is likely to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it.

21.2 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.

22. COUNCIL OF GOVERNORS – TRAVEL EXPENSES

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

23. COUNCIL OF GOVERNORS – FURTHER PROVISIONS

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

24. BOARD OF DIRECTORS – GENERAL DUTY

The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the Members of the Trust as a whole and for the public.

25. BOARD OF DIRECTORS – COMPOSITION

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

25.2 The Board of Directors shall comprise:

25.2.1 a non-executive Chair

25.2.2 up to 8 other Non-Executive Directors (one of which may be nominated as the Senior Independent Director); and

25.2.3 up to 7 Executive Directors.

25.3 One of the Executive Directors shall be the Chief Executive.

25.4 The Chief Executive shall be the Accounting Officer.

25.5 One of the Executive Directors shall be the Finance Director.

- 25.6 One of the Executive Directors shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 25.7 One of the Executive Directors shall be a registered nurse or a registered midwife.
- 25.8 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.

26. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

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

- 26.1 he is a Member of a Public Constituency, or
- 26.2 he is a Member of the Patients and Carer Constituency, or
- 26.3 where any of the Trust's Hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and
- 26.4 he is not disqualified by virtue of paragraph 31 below.

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

- 27.1 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.
- 27.2 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.
- 27.3 The initial Chair and the initial Non-Executive Directors shall be appointed in accordance with paragraph 28 below.

28. BOARD OF DIRECTORS – APPOINTMENT OF INITIAL CHAIR AND INITIAL OTHER NON-EXECUTIVE DIRECTORS

- 28.1 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.
- 28.2 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 26 above (other than disqualification by virtue of paragraph 31 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.

29. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR

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

30. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

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

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

31. BOARD OF DIRECTORS – DISQUALIFICATION

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

- 31.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and who (in either case) has not been discharged;
- 31.2 a person who has made a composition or arrangement with, or granted a Trust deed for his creditors and who has not been discharged in respect of it;
- 31.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 31.4 a person who falls within the further grounds for disqualification set out in Annex 8 and 9.

32. BOARD OF DIRECTORS – MEETINGS

- 32.1 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 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. BOARD OF DIRECTORS – STANDING ORDERS

The Standing Orders for the practice and procedure of the Board of Directors are attached at Annex 8.

34. BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS

- 34.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
 - 34.1.1 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;
 - 34.1.2 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;
- 34.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if:
 - 34.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 34.2.2 the matter has been authorised in accordance with this Constitution.
- 34.3 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.
- 34.4 In paragraph 34.1.2 "third party" means a person other than:

- 34.4.1 the Trust; or
- 34.4.2 a person acting on its behalf.
- 34.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 34.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 34.9 A Director need not declare an interest:
 - 34.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 34.9.2 if, or to the extent that, the Directors are already aware of it;
 - 34.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - (a) by a meeting of the Board of Directors; or
 - (b) by a committee of the Directors appointed for the purpose under the Constitution.
- 34.10 The Standing Orders of 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.

35. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 35.1 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.
- 35.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances and the other terms and conditions of office of the Chief Executive and other Executive Directors.

36. REGISTERS

- 36.1 The Trust shall have:
 - 36.1.1 a register of Members showing, in respect of each Member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
 - 36.1.2 a register of members of the Council of Governors;
 - 36.1.3 a register of interests of Governors;
 - 36.1.4 a register of Directors; and
 - 36.1.5 a register of interests of the Directors.

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

37. REGISTERS – INSPECTION AND COPIES

- 37.1 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.
- 37.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
- 37.2.1 any member of the Patients and Carers Constituency; or
- 37.2.2 any other member of the Trust, if he so requests.
- 37.3 So far as the registers are required to be made available:
- 37.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 37.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 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.

38. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

- 38.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times
- 38.1.1 a copy of the current Constitution;
- 38.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
- 38.1.3 a copy of the latest annual report;
- 38.2 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 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 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
- 38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
- 38.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 38.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 38.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of

State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;

- 38.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 38.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
 - 38.2.9 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; and
 - 38.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.4 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. AUDITOR

- 39.1 The Trust shall have an auditor.
- 39.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

40. AUDIT COMMITTEE

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

41. ACCOUNTS

- 41.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 41.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 41.3 The accounts are to be audited by the Trust's auditor.
- 41.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 41.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 42.1 The Trust shall prepare an annual report and send it to Monitor.
- 42.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 42.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 42.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

- 42.5 Each forward plan must include information about –
 - 42.5.1 The activities other than the provision of goods and services for the purpose of the health service in England that the Trust proposes to carry on, and
 - 42.5.2 the income it expects to receive from doing so.
- 42.6 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 –
 - 42.6.1 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
 - 42.6.2 notify the Directors of the Trust of its determination.
- 42.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve its implementation.

43. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

- 43.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 43.1.1 the annual accounts;
 - 43.1.2 any report of the auditor on them; and
 - 43.1.3 the annual report.
- 43.2 The documents referred to in paragraph 43.1 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.
- 43.3 The Trust may combine a meeting of the Council of Governors convened for the purpose of paragraph 43.1 with the Annual Members' Meeting.

44. INSTRUMENTS

- 44.1 The Trust shall have a seal.
- 44.2 The seal shall not be affixed except under the authority of the Board of Directors.

45. AMENDMENT OF THE CONSTITUTION

- 45.1 The Trust may make amendments of its Constitution only if:
 - 45.1.1 more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve the amendments; and
 - 45.1.2 more than half of the members of the Board of Directors of the Trust present and voting at a meeting of the Board of Directors approve the amendments.

- 45.2 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.
- 45.3 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):
- 45.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
- 45.3.2 the Trust must give the members present at the Annual Members' Meeting an opportunity to vote on whether they approve the amendment; and
- 45.3.3 if more than half of the members present and voting at the Annual Members' Meeting 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.
- 45.4 Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

46. SIGNIFICANT TRANSACTIONS

- 46.1 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust present and voting at the meeting of the Council of Governors approve entering into the transaction.
- 46.2 For the purposes of paragraph 46.1 above, a "Significant Transaction" means a transaction or arrangement under which the income or expenditure attributable to the assets and/or the contract associated with the transaction or arrangement is greater than 25% of the total income of the Trust as set out in the preceding Financial Year's annual accounts.

ANNEX 1

The Public Constituencies

Table 1

1	2	3	4
Name of the Public Constituencies	Area of the Public Constituencies (as defined by Local Authority boundaries)	Minimum Number of Members	Number of Governors to be Elected
Bristol	Bristol City Council	1307	5
North Somerset	North Somerset District Council	351	2
South Gloucestershire	South Gloucestershire Council	292	2
Rest of England and Wales	Non-local, including members who have, or have not used the Trust's services as a patient.	819	2

ANNEX 2

The Staff Constituency**Table 1**

1	2	3	4
Classes within the Staff Constituency	Individuals Eligible for Membership of that Staff Class	Minimum Number of Members in each Staff Class	Number of Governors to be Elected for each Staff Class
Medical and Dental Staff Class	Those individuals defined in paragraph 1 below.	830	1
Nursing and Midwifery Staff Class	Those individuals defined in paragraph 2 below.	2715	2
Other Clinical Healthcare	Those individuals defined in paragraph 3 below.	1190	1
Non-Clinical Healthcare	Those individuals defined in paragraph 4 below.	2125	2

1. MEDICAL AND DENTAL STAFF CLASS

1.1 The Members of the Medical and Dental Staff Class are individuals who are Members of the Staff Constituency who:

1.1.1 are fully registered persons within the meaning of the Medicines Act 1956 and the Dentists Act 1984 (as the case may be) and who are otherwise fully authorised and licensed to practise in England and Wales or 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 having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or dentist; and

1.1.2 who are employed by the Trust in that capacity at the at the date of their invitation or application under paragraph 9 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. NURSING AND MIDWIFERY STAFF CLASS

2.1 The Members of the Nurses and Midwifery Staff Class are individuals who:

2.1.1 are registered under the Nurses, Midwives and Health Visitors Act 1997 and who are otherwise fully authorised and licensed to practise in England and Wales or 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, having regard to the usual definitions applicable at that time for persons carrying on the profession of registered nurse or registered midwife and individuals who are health care assistants; and

- 2.1.2 who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 9 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. OTHER CLINICAL HEALTHCARE STAFF CLASS

- 3.1 The Members of the Other Clinical Healthcare Staff Class are individuals who are Members of the Staff Constituency:
 - 3.1.1 who do not come within paragraph 1 above and whose regulatory body falls within the remit of the Council for the Regulation of Healthcare Professional established by Section 25 of the NHS Reform Healthcare Professions Act 2002, or who are otherwise designated by the Trust from time to time as eligible Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying on such professions; and
 - 3.1.2 who are employed by the Trust in that capacity at the date of their invitation or application under paragraph 9 of the Constitution to become a Member in accordance with the provision of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

4. NON-CLINICAL STAFF CLASS

- 4.1 The Members of the Non-Clinical Staff Class are individuals who are Members of the Staff Constituency (which for the avoidance of doubt shall include those individuals who are Members of the Staff Constituency pursuant to paragraphs 8.2.1 and 8.2.2 of the Constitution), who do not come within paragraphs 1, 2 or 3 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
- 4.2 who are employed or designated by the Trust at the date of their invitation or application under paragraph 9 of the Constitution to become a Member in accordance with the provision of Annex 9 and at all times thereafter remain employed by the Trust in that capacity.

5. FOR THE AVOIDANCE OF DOUBT

- 5.1 Those individuals who are Members of the Staff Constituency pursuant to paragraph 8.2.3 of the Constitution (academic staff under an honorary contract with the Trust) shall be a member of a Staff Class detailed in paragraphs 1, 2 and 3 above as appropriate.

6. MINIMUM NUMBERS AND NUMBERS OF GOVERNORS

- 6.1 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 4 of that Table.

7. CONTINUOUS EMPLOYMENT

- 7.1 For the purposes of paragraph 8.1.2 and 8.2 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.

8. EXERCISE OF FUNCTIONS

- 8.1 For the purposes of paragraph 8.2 of the Constitution it shall be for the Trust in its absolute discretion to determine whether an individual exercises functions for the purposes of the Trust and whether that individual has done so continuously for a period of at least twelve months.

ANNEX 3**The Patients and Carers Constituency**

1	2	3	4
Classes within the Patients and Carers Constituency	Individuals eligible for Membership of the Patients and Carers Class	Minimum Number of Members in each Patients and Carers Class	Number of Governors to be elected for each Patients and Carers Class
Local Patients Class	<p>Those Members of the Local Patients Class are those individuals who:</p> <p>(a) are Patients residing in an area specified in Annex 1, Table 1 as an area for a Public Constituency; and</p> <p>(b) have attended any of the Trust's Hospitals as a Patient.</p>	2275	6
Carers of Adult Patients	<p>Those Members of the Carers of Adult Patients Class are those individuals who:</p> <p>(a) are Carers who provide care to Patients who are 16 years of age or over; or</p> <p>(b) have attended any of the Trust's Hospitals as Carer of a Patient.</p>	728	2
Carers of Child Patients	<p>Those Members of the Carers of Child Patients Class are those individuals who</p> <p>(a) are Carers who provide care to Patients who are under 16 years of age; or</p> <p>(b) have attended any of the Trust's</p>	728	2

	Hospitals as Carer of a Patient.		
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ANNEX 4

Composition of the 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 Patients 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.

Qualifying Local Authority

- 2.2 Bristol City Council 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 local authority from appointing its Governor.
- 2.3 If the local authority 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 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.
- 2.4 A Governor appointed under paragraph 2.3 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 the 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.

Universities

- 2.5 The University of West of England and the University of Bristol shall each 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 Universities from appointing its Governors.
- 2.6 Governors appointed under paragraph 2.5 shall serve on the Council of Governors for the period stipulated in Annex 6.

Partnership Organisations

- 2.7 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:
- 2.7.1 Avon and Wiltshire Mental Health Partnership NHS Trust;
- 2.7.2 South Western Ambulance Service NHS Foundation Trust;
- 2.7.3 Joint Union Committee;
- 2.7.4 Voscur ; and
- 2.7.5 The Care Forum
- 2.8 Each of the above organisations shall be entitled to appoint 1 Governor each 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
- 2.9 Subject to Monitor's prior consent having been obtained, the Trust shall be entitled in its absolute discretion to:
- 2.9.1 give notice to any Partnership Organisation that it is no longer to be a Partnership Organisation for the purposes of this Constitution after the expiration of a period or upon the date specified in the notice; and
- 2.9.2 appoint some other organisation as a Partnership Organisation in its place.
- 2.10 Upon notice being given under paragraph 2.9, the Partnership Organisation to which notice has been given shall cease to be a Partnership Organisation and its Governor shall cease to hold office forthwith upon the expiration of such notice period or upon such date as may have been specified in the said notice.

3. Composition of the Council of Governors

Table 1

	Electing/Appointing Body	Number of Governors	Total
1.	Public Constituencies		
	1.1 Bristol	5	
	1.2 South Gloucestershire	2	
	1.3 North Somerset	2	9
2.	Staff Constituency		
	2.1 Medical and Dental Staff Class	1	
	2.2 Nursing and Midwifery Staff Class	2	
	2.3 Other Clinical Healthcare Staff Class	1	
	2.4 Non-Clinical Healthcare Staff Class	2	6

3.	Patients and Carers Constituency		
	3.1 Carers of Adult Patients	2	
	3.2 Carers of Child Patients	2	
	3.3 Local Patients	6	
	3.4 Non-Local Patients	2	12
4.	Appointed Governors		
	4.1 Bristol City Council	1	
	4.2 University of Bristol	1	
	4.3 University of West of England	1	
	4.4 Avon and Wiltshire Mental Health Partnership NHS Trust	1	
	4.4 South Western Ambulance Service NHS Foundation Trust	1	
	4.5 Joint Union Committee	1	
	4.6 The Care Forum/Voscur	2	
	4.7 University Hospitals Bristol NHS Foundation Trust Youth Council	2	10
	Total Number of Governors		37

4. Further Provisions

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

ANNEX 5

The Model Rules for Elections**Part 1 – Interpretation**

1	Interpretation
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Part 2 – Timetable for election

- 2 Timetable
3 Computation of time

Part 3 – Returning officer

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

Part 4 – Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

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

Action to be taken before the poll

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

The poll

- 26 Eligibility to vote

27	Voting by persons who require assistance
28	Spoilt ballot papers
29	Lost ballot papers
30	Issue of replacement ballot paper
31	Declaration of indemnity for replacement ballot papers

Procedure for receipt of envelopes

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

Part 6 – Counting the votes

36	Arrangements for counting of the votes
37	The count
38	Rejected ballot papers
39	First stage
40	The quota
41	Transfer of votes
42	Supplementary provisions on transfer
43	Exclusion of candidates
44	Filling of last vacancies
45	Order of election of candidates
46	Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

47	Declaration of result for contested elections
48	Declaration of result for uncontested elections

Part 8 – Disposal of documents

49	Sealing up of documents relating to the poll
50	Delivery of documents
51	Forwarding of documents received after close of the poll
52	Retention and public inspection of documents
53	Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during contested election

54	Countermand or abandonment of poll on death of candidate
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Part 10 – Election expenses and publicity

Expenses

55	Expenses incurred by candidates
56	Expenses incurred by other persons
57	Personal, travelling and administrative expenses

Publicity

58	Publicity about election by the corporation
59	Information about candidates for inclusion with voting documents
60	Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

61	Application to question an election
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62	Secrecy
63	Prohibition of disclosure of vote
64	Disqualification
65	Delay in postal service through industrial action or unforeseen event

Part I Interpretation

1. Interpretation

(1) In these rules, unless the context otherwise requires -

“corporation” means the public benefit corporation subject to this constitution;

“election” means an election by a Constituency to fill a vacancy among one or more posts on the Council of Governors;

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

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

(2) Other expressions used in these rules and in Schedule 7 to the 2006 Act have the same meaning in these rules as in that Schedule.

Part 2— Timetable for election

2. Timetable

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

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

3. Computation of time

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

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

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

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

Part 3— Returning officer

4. Returning officer

- (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

Part 4 Stages Common to Contested and Uncontested Elections

8. Notice of election

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

- (a) the Constituency for which the election is being held,
- (b) the number of Members of the Council of Governors to be elected from that Constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer-
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation,

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

10. Candidate's particulars

- (1) The nomination paper must state the candidate's
 - (a) full name,
 - (b) contact address in full, and
 - (c) Constituency, of which the candidate is a Member.

11. Declaration of interests

The nomination paper must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party?

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

The nomination paper must include a declaration made by the candidate:

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

13. Signature of candidate

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

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

14. Decisions as to the validity of nomination —

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

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

15. Publication of statement of candidates

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show:
 - (a) the name, contact address, and Constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,

as given in their nomination paper.

- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

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

17. Withdrawal of candidates

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

18. Method of election

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

Part 5— Contested elections**19. Poll to be taken by ballot**

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

20. The ballot paper

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

- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (Public and Patient and Carers' Constituencies)

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

Action to be taken before the poll

22. List of eligible voters

- (1) The corporation is to provide the returning officer with a list of the Members of the Constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each Member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll

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

- (a) the name of the corporation,
- (b) the Constituency for which the election is being held,
- (c) the number of Members of the Council of Governors to be elected from that Constituency,

- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer

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

25. Ballot paper envelope and covering envelope

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

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance —

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

28. Spoilt ballot papers

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

29. Lost ballot papers

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

30. Issue of replacement ballot paper

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not

already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

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

31. Declaration of identity for replacement ballot papers (Public and Patients and Carers' Constituencies)

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

Procedure for receipt of envelopes

32. Receipt of voting documents

- (1) Where the returning officer receives a:
 - (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

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

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

(b) the unique identifier on a ballot paper.

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

33. Validity of ballot paper

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

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to:

(a) put the declaration of identity if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to

(a) mark the ballot paper “disqualified”,

(b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,

(c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and

(d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (Public and Service Users and Carers' constituencies)

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

(a) mark the declaration of identity “disqualified”,

(b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and

(c) place the declaration of identity in a separate packet.

35. Sealing of packets

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

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the declarations of identity if required,

(c) the list of spoiled ballot papers,

(d) the list of lost ballot papers,

(e) the list of eligible voters, and

(f) the list of tendered ballot papers.

Part 6 - Counting the votes

36. [Not Used]

37. Arrangements for counting of the votes

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

38. **The count** — (1) The returning officer is to —

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

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

39. Rejected ballot papers —

(1) Any ballot paper —

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

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

(2) Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

(3) A ballot paper on which a vote is marked —

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

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

(4) The returning officer is to —

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and

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

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

40. [Not used]

41. [Not used]

42. [Not used]

43. [Not used]

44. [Not used]

45. [Not used]

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

Part 7— Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections — (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to —

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the Constituency 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 Applicant Trust by section 33(4) Part 2, Chapter 5 of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make:-

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

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

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

Part 8— Disposal of documents

49. Sealing up of documents relating to the poll — (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets —

- (a) the counted ballot papers,
 - (b) the ballot papers endorsed with “rejected in part”,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of —
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoilt ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.

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

- (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 to which the election relates.

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

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

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

(c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

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

52. Retention and public inspection of documents — (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing —

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part II.

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to —

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

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

(4) On an application to inspect any of the documents listed in paragraph (1), —

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

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

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

Part 9— Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate — (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

(a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that Constituency and

(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

(2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that Constituency.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to —

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

(6) The returning officer is to endorse on each packet a description of —

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

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

Part 10— Election expenses and publicity

Election expenses

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

56 Expenses and payments by candidates - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to —

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

57. Election expenses incurred by other persons — (1) No person may -

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

(b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation — (1) The corporation may —

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be —

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

(d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

59. Information about candidates for inclusion with voting documents - (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of—

(a) a statement submitted by the candidate of no more than 250 words, and

(b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase “for the purposes of a candidate's election” is to be construed accordingly.

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

Part II — Questioning elections and the consequence of irregularities

61. Application to question an election — (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

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

(3) An application may only be made to the Regulator by -

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must —

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the Regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

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

b. The determination by the person or persons nominated in accordance with Rule 61(6)(a) shall be binding on and shall be given effect by the corporation, the applicant and the members of the Constituency including all the candidates for the election to which the application relates.

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

Part 12— Miscellaneous

62. Secrecy — (1) The following persons —

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

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

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

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

63. Prohibition of disclosure of vote — No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

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

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

65. Delay in postal service through industrial action or unforeseen event — If industrial action, or some other unforeseen event, results in a delay in —

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

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

ANNEX 6

Additional Provisions – Council of Governors**1. Council of Governors: Terms of Office**

A Governor shall be:

- 1.1 elected or appointed for a term of three years (one year for Youth Council appointed governors);
- 1.2 shall be 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;
- 1.3 shall cease to hold office if:
 - 1.3.1 he ceases to be a Member of a Trust constituency or, in the case of an Appointed Governor, if the body which appointed him withdraws its appointment at any time;
 - 1.3.2 his term of office is terminated in accordance with paragraph 2 below and/or he is disqualified from or is otherwise ineligible to hold office as a Governor; or
 - 1.3.3 he resigns by notice in writing to the Trust.
- 1.4 Notwithstanding the provisions of paragraph 1.3.1 above, a Public Governor elected by a Public Constituency who ceases to be eligible to be a Member of that Public Constituency but who is eligible to be and forthwith becomes a Member of another Public Constituency shall not by virtue of paragraph 1.3.1 above cease to hold office but shall continue in office as Public Governor for the Constituency which elected him for the remainder of the term for which he was elected.

2. Council of Governors: Removal and Disqualification

- 2.1 A Governor shall not be eligible to become or continue in office as a Governor if:
 - 2.1.1 he ceases to be eligible to be a Member, save in the case of Appointed Governors;
 - 2.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him;
 - 2.1.3 any of the grounds contained in paragraph 16 of the Constitution apply to him;
 - 2.1.4 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body;
 - 2.1.5 he is a person whose term of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;

- 2.1.6 he has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list;
- 2.1.7 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act or has spoken or voted in a meeting on a matter in which they have direct or indirect pecuniary or non-pecuniary interest and he is judged to have acted so by a majority of not less than 75% of the Council of Governors.
- 2.1.8 Monitor has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or Monitor has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
- 2.1.9 he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff;
- 2.1.10 he has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974;
- 2.1.11 his term of office is terminated pursuant to paragraph 3 below;
- 2.1.12 he is a member of a Staff Class and any professional registration relevant to his eligibility to be a member of that Staff Class has been suspended for a continuous period of more than six months;
- 2.1.13 he is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs;
- 2.1.14 the relevant organisation which he represents ceases to exist;
- 2.1.15 he is a Member of the UK Parliament;
- 2.1.16 he is a Director of the Trust or a governor of another NHS Foundation Trust;
- 2.1.17 he is a Member of a local authority overview and scrutiny committee; or
- 2.1.18 he is not 16 years of age at the closing date for nominations for election or appointment.
- 2.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Trust in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered him disqualified.
- 2.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable.
- 2.4 Upon the giving of notice under paragraphs 2.2 and 2.3 above, that person's tenure of office as a Governor shall thereupon be terminated and he shall cease to be a Governor and his name shall be removed from the Register of Governors.

3. Council of Governors: Termination of Tenure

- 3.1 A Governor's term of office shall be terminated:
- 3.1.1 by the Governor giving notice in writing to the Trust of his resignation from office at any time during that term of office;
- 3.1.2 by the Trust if any grounds exist under paragraph 2 above;
- 3.1.3 by the Council of Governors if he has failed to attend two 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.
- 3.1.4 If the Council of Governors resolves to terminate his term of office for reasonable cause on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose that his continuing as a Governor would or would be likely to:
- (a) 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
 - (b) 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
 - (c) adversely affect public confidence in the goods and services provided by the Trust; or
 - (d) otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or
 - (e) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
 - (f) the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust; or
 - (g) he has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him to undertake in his capacity as a Governor by a date six months from the date of his election or appointment; or
 - (h) he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, and/ or the Constitution; or
 - (i) he has committed a material breach of any code of conduct applicable to Governors of the Trust and/or the Governors standing orders.
- 3.2 Upon a Governor resigning under paragraph 3.1.1 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 his name shall be forthwith removed from the Register of Governors.

- 3.3 The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating his tenure of office.
- 3.4 A Governor who resigns or whose tenure of office is terminated under this paragraph shall not be eligible to stand for re-election for a period of 3 years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of whichever is the later except by resolution carried by a majority of the Council of Governors present and voting at a general meeting.

4. Council of Governors:

- 4.1 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 2 or paragraph 3, Elected Governors shall be replaced in accordance with paragraphs 4.2 and 4.4 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.
- 4.2 Where an Elected Governor ceases to hold office during his 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 for the unexpired balance of the retiring Governor's term of office provided that he achieved at least five percent (5%) of the number of votes for that Constituency (or Class of Constituency, as the case may be). If that candidate does not accept to fill the vacancy it will then be offered to that candidate who secured the next highest number of votes provided that he achieved at least five percent (5%) of the number of votes.
- 4.3 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 Patient and Carer 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.
- 4.4 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 conducting of the process set out in paragraphs 4.2 and 4.3 above.
- 4.5 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.

5. Council of Governors: Role

- 5.1 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 and the Trust's Code of Conduct for the Council of Governors.
- 5.2 Subject to the requirement specified in paragraph 5.1 above, each Governor shall exercise his own skill and judgement in his conduct of the Trust's affairs and shall in his stewardship of the Trust's affairs bring as appropriate the

perspective of the constituency or organisation by which he was elected or appointed, as the case may be.

- 5.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Council of Governors shall;
 - 5.3.1 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
 - 5.3.2 monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with the terms of this Constitution.

6. Council of Governors: Meetings

- 6.1 The Council of Governors shall hold not less than four general meetings each Financial Year.
- 6.2 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.
- 6.3 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.
- 6.4 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.
- 6.5 A meeting of the Council of Governors shall be quorate and quoracy shall require that there shall be present at the meeting not less than 50% of all Governors and of those not less than 51% shall be Elected Governors.
- 6.6 No business shall be conducted at a meeting which is not quorate.
- 6.7 If a meeting is not quorate within 15 minutes of the time scheduled for its commencement it shall automatically stand adjourned for a period of 7 days and the Chair shall give or shall procure the giving of notice to all Governors of the date, time and place of that adjourned meeting.
- 6.8 The Council of Governors' Standing Orders as set out in Annex 7 of the Constitution provides for further details of the practice and procedure at Council of Governors meetings (including general meetings).

7. Council of Governors: Declarations

- 7.1 A Member of a Public Constituency or of the Patients and Carers Constituency standing for election as Governor must make a declaration for the purposes of Section 60 of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a Member and that he is not prevented from being a member of the Council of Governors by virtue of any provisions of this Constitution.

7.2 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 declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political Membership and any financials I have in the Trust at Section 4 of this form. I understand that if any of these declarations are later found to be false I will if elected lose my seat on the Council of Governors and may also have my Membership withdrawn. I endorse the principles of the National Health Service and in particular that healthcare should be available to everyone regardless of age, income or ethnicity and is based on need, not the ability to pay, as well as being free at the point of delivery”.

ANNEX 7

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

**THE UNIVERSITY HOSPITALS BRISTOL 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 University Hospitals Bristol NHS Foundation Trust (“the Trust”) is a Public Benefit Corporation that was established by the granting of Authorisation by Monitor.

The statutory functions conferred on the Trust are set out in the National Health Service Act 2006.

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 19 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 27)
- 2.1.2 Approve the appointment of the Chief Executive (Constitution paragraphs 30)
- 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)
- 2.1.5 Receive the Annual Report & 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 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, ensuring 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 and determine Membership disputes in accordance with Annex 9, Paragraph 8.1.2;
- 2.1.11 To consider resolution to remove a Governor from the Council of Governors in accordance with Annex 6, paragraph 3
- 2.1.12 To seek to ensure that the interests of the community are appropriately represented through the delivery of the Membership Strategy

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 27 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 Deputy-Chair of the Council of Governors** – The Council of Governors shall appoint a Deputy-Chair in accordance with paragraph 29 of the Constitution.

2.6 Any Director so appointed may at any time resign from the office of Deputy-Chair by giving notice in writing to the Secretary to the Trust and the Governors of the Trust

may thereupon appoint another Deputy-Chair in accordance with paragraph 29 of the Constitution.

- 2.7 The Deputy-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 On those occasions when the Council of Governors is considering matters relating to Non-Executive Directors, and it would be inappropriate for the Chair to preside.
 - 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 pecuniary interest that prevents him 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 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 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.
- 3.1.3 If the Chair fails to call a meeting of the Council of Governors after a requisition for that purpose, signed by at least one-third of the whole number of the Council of Governors has been presented to him at Trust Headquarters, such one third or more members of the Council of Governors may forthwith call a meeting.

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 18 and Annex 6 of the Constitution.

3.3 **Chair of Meetings** – The Chair of the Trust, or in his absence, the Deputy 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 Deputy 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 by request in writing to the Chair or 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 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 he considers 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 he 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, his/her 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, 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 **Record of Attendance** – the names of the Governors present at the meeting shall be recorded in the minutes.
- 3.25 **Quorum** – A meeting of the Council of Governors shall be quorate and quoracy shall require that there shall be present at the meeting not less than 50% of all Governors and of those not less than 51% shall be Elected Governors.
- 3.26 A Governor who has declared a non-pecuniary 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 pecuniary 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.
- 3.27 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 paragraph 10.2 of this Annex 7, 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 21 of the Constitution, Governors are required to declare formally any direct or indirect pecuniary 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 Secretary:
- 5.2.1 any pecuniary interest, direct or indirect, 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 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 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 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, he 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 he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter. The provisions of this paragraph are subject to paragraph 5.9.
- 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.
- 5.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 5.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- 5.7.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 5.7.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
- 5.8 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 5.8.1 of his membership of a company or other body, if he has 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 he is connected as mentioned in paragraphs 5.2, 5.5 and 5.7, 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 pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 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 he has 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 his duty disclose his 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 interest of the other.
- 5.11 If Governors have any doubt about the relevance of an interest, this should be discussed with the Secretary.
- 5.12 **Register of Interests** - the Secretary shall record any declarations of interest made in a Register of Interests kept by him 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 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 reasonable 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 principles outlined in HSG(93)5, “Standards of Business Conduct for NHS staff”. 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 he/she has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Secretary of the fact that he/she is interested therein. In the case of married persons or 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.

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 Secretary as being under the auspices of the Council of Governors.

8.2 Expenses will be authorised and reimbursed through the Secretary's office on receipt of a completed and signed expenses form provided by the 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 and any requirements for amendments must be directed to the joint meeting with the Board of Directors, unless paragraph 8.3.1 of Annex 9 applies.

9.2 **Deputy-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 Deputy-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 APPOINTMENTS COMMITTEE

10.1 The Chair and other Non-Executive directors shall be appointed following a process of open competition conducted in accordance with paragraph 10.4 below.

10.2 The Council of Governors shall establish a committee of its members to be called the Nominations and Appointments Committee ("the Committee") to discharge those functions in relation to the selection of the Chair and Non-Executive Directors described in paragraph 10.4 below and such other functions as are provided for in paragraph 10.6 below.

10.3 The Committee shall be chaired by the Trust Chair and will further consist of:

10.3.1 2 appointed governors

- 10.3.2 4 elected public, patient or carer governors
- 10.3.3 1 elected staff governor
- 10.4 The functions of the Committee shall be as follows:
 - 10.4.1 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;
 - 10.4.2 to seek by way of open advertisement and other means candidates for office and to assess and select for interview such candidates as are considered appropriate and in doing so the Committee shall be at liberty to seek advice and assistance from persons other than members of the Committee or of the Council of Governors
 - 10.4.3 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
 - 10.4.4 as further stipulated in paragraph 10.6 below.
- 10.5 The Council of Governors shall resolve in 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 candidates.
- 10.6 The Committee shall:-
 - 10.6.1 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
 - 10.6.2 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.

ANNEX 8

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

**UNIVERSITY HOSPITALS BRISTOL NHS
FOUNDATION TRUST**

Standing Orders

BOARD OF DIRECTORS

FOREWORD

This document provides a regulatory and business framework for the conduct of the Board of Directors.

Statutory Framework

University Hospitals Bristol NHS Foundation Trust (“**the Trust**”) is a public benefit corporation, which was established under the 2006 Act on 1 June 2008, subject to its Constitution

The place of business of the Trust is Marlborough Street, Bristol, BS1 3NU.

NHS Foundation Trusts are governed by a regulatory framework that confers the functions of the Trust and comprises the 2006 Act and the Constitution. The powers of the Trust are set out in the 2006 Act.

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

As a public benefit corporation the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the later note it is accountable to the Charity Commission for those funds deemed to be charitable.

The Trust also has statutory powers under section 75 of the 2006 Act to enter into prescribed arrangements jointly planned with local authorities.

In accordance with paragraph 33 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 code of accountability requires that, inter alia, Boards draw up a schedule of decisions referred to the Board, and 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 Code (and the Constitution) also require the establishment of Audit and Remuneration Committees with formally agreed terms of reference. The Constitution and the Code of Conduct makes various requirements concerning possible conflicts of interest of Board Directors.

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

Whilst Department of Health guidance and policies are not strictly binding on NHS Foundation Trusts, the Trust has elected to comply with the content of those documents referenced in these Standing Orders, to the extent applicable and appropriate.

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 Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order 5.1 or 5.2 below or by an Officer of the Trust 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". Delegated Powers are covered in a separate document entitled – ‘Schedule of Matters reserved to the Board and Scheme of Delegation’ and this document shall have effect as if incorporated into the Standing Orders.

Integrated Governance

With a view to establishing enhanced governance procedures and to ensure that decision-making is informed, the Trust’s governance strategy is centred around integrated governance. Monitor’s Code of Governance has been incorporated into the Trust’s governance arrangements. Integrated governance will better enable the Board to take a holistic view of the organisation and its capacity to meet its legal and statutory requirements and clinical, quality and financial objectives.

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 he should be advised by the Chief Executive).
- 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 4 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 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, quality and clinical effectiveness, 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.

"FUNDS HELD ON TRUST" means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, 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.

"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.

"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.
- 2.3 The power 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 the Schedule of Matters reserved to the Board and Scheme of Delegation 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 of Directors, being:
- 2.5.1 the non-executive Chair of the Trust;
- 2.5.2 up to seven other Non-Executive Directors;
- 2.5.3 up to seven 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.
- 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.
- 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 a Nominations and 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 Deputy-Chair** – Subject to SO 2.10 below, the Council of Governors may appoint a Non-Executive Director to be Deputy-Chair for such a period, not exceeding the remainder of his term as Non-Executive Director of the Trust, as they may specify on appointing him.
- 2.9 Any Non-Executive Director so elected may at any time resign from the office of Deputy-Chair by giving notice in writing to the Chair and the Council of Governors may thereupon appoint another Non-Executive Director as Deputy-Chair in accordance with paragraph 2.8.
- 2.10 Where the Chair of the Trust has died or has ceased to hold office or where he has been unable to perform his duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his 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 his duties, be taken to include references to the Deputy-Chair.
- 2.11 **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.

Executive Directors

Executive Directors shall exercise their authority within the terms of these Standing Orders, the standing financial instructions and the Scheme of Delegation.

Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He/she is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under standing financial instructions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum.

Finance Director

The Finance Director shall be responsible for the provision of financial advice to the Trust and to its Directors and for the supervision of financial control and accounting systems. He/she shall be responsible (along with the Chief Executive) for ensuring the discharge of obligations under relevant Financial Directions.

Non-Executive Directors

The Non-Executive Directors shall not be granted (nor shall they seek to exercise) any individual executive powers on behalf of the Trust. They may, however, exercise collective authority when acting as members of, or when chairing a committee of, the Trust which has delegated powers.

Chair

The Chair shall be responsible for the operation of the Board and chair all Board meetings when present. The Chair shall comply with his/her terms of appointment and with these Standing Orders. The Chair shall liaise with the Council of Governors (if requested to do so) over the appointment of Non-Executive Directors and, once appointed, shall take responsibility (either directly or indirectly) for their induction, their portfolios of interests and assignments. The Chair and Council of Governors shall jointly appraise the performance of Non-executive Directors. The Chair shall work closely with the Chief Executive and shall ensure that all appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions. The Chair shall also ensure that the designation of lead roles or appointments of Directors as may be required by any statutory or other applicable guidance will be made in accordance with that statutory requirement or guidance (e.g. appointing a lead Director with responsibilities for Infection Control or Child Protection Services etc.)

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 of the meeting for reasons of confidentiality, or on other proper grounds, or for other special reasons. Matters to be dealt with by the Board following the exclusion of members of the public and/or press shall be confidential to the members of the Board. Directors and any employees of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust.
- 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 Deputy Chair) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board'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".

Observers at Board Meetings

- 3.2.1 The Trust may make such arrangements from time to time as it sees fit with regards to the extending of invitations to observers to attend and address any of the Board meetings.
- 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 permission shall be granted only upon resolution of the Trust.
- 3.4 **Calling of Meetings** – Ordinary meetings of the Board shall be held at such times and places as the Board determines.
- 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 him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.6 **Notice of Meetings** – Before each meeting of the Board, a written 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 his behalf, shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least 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, or emergency motions permitted under SO 3.19.1.
- 3.9 Agendas will normally be sent to members six 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 on the Trust's website 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 his/her request in writing to the Chair at least twelve 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 twelve 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 Deputy-Chair, if there is one and he/she is present, shall preside. If the Chair and Deputy-Chair are absent, such Non-Executive as the Directors present shall choose shall preside.

- 3.15 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy-Chair, if present, shall preside. If the Chair and Deputy-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 twelve clear days before the meeting to the Chief Executive, who shall ensure that it is brought to the immediate attention of the Chair. The Chief Executive shall insert in the agenda for the meeting all notices so received, subject to the notice being permissible under the appropriate regulations. Subject to SO 3.20.8, this paragraph 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 six calendar months shall bear the signature of the Director who gives it and also the signature of three other Board Directors and, before considering any such motion, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation. 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 six months, however the Chair may do so if he/she considers it appropriate. This Standing Order 3.18 shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.
- 3.19 **Motions** - A motion may be proposed by the Chair or any Director present at the meeting. Such motion shall be seconded by another Director. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

Emergency Motions

- 3.19.1 Subject to the agreement of the Chair and SO 3.20 below, a Director may give written notice of an emergency motion after the issue of the notice of meeting and agenda (pursuant to SO 3.6 and SO 3.9), up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. At the Chair's discretion, the emergency motion shall be declared to the Board at the commencement of the business of the meeting as an additional item included on the agenda. The Chair's decision to include the item shall be final.
- 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;
- 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; (*)
- 3.20.6 that a Director be not further heard; (*)
- 3.20.7 that the public be excluded pursuant to SO 3.1;

- 3.20.8 *in the case of sub-paragraphs 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.
- 3.20.9 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. If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved;
- 3.20.10 the Chair may (at his/her discretion) refuse to admit any motion of which notice was not given in accordance with SO 3.16, other than a motion relating to:
- (a) the reception of a report;
 - (b) consideration of any item of business before the Trust Board;
 - (c) the accuracy of minutes;
 - (d) that the Board proceed to next business;
 - (e) that the Board adjourn;
 - (f) that the question be now put.
- 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 matter shall be final.
- 3.22 **Voting** - Save as provided in SO 3.32 every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and 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 (or any other person presiding in accordance with the terms of these Standing Orders) 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 the Chair so directs or it is proposed and seconded by any of the Directors present.
- 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, his/her 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 3.38 (Quorum).
- 3.32 **Suspension of Standing Orders** – Except where it would contravene any statutory provision or any provision in the Constitution, 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 at least two-thirds 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 and Assurance Committee shall review every decision to suspend Standing Orders.
- 3.37 **Record of Attendance** – The names of the Chair and Directors present at the meeting shall be recorded in the minutes.
- 3.38 **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) is present.
- 3.39 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.40 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) he 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, 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,
 - 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, the Trust has responsibility to ensure that the proper delegation is in place. In other situations, i.e. delegation to committees, sub 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 Board in public or private session (as appropriate) 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 in respect of its sub-committees.
- 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 he/she will perform personally and shall nominate Officers to undertake the remaining functions for which he/she will still retain an accountability to the Trust.
- 4.6 The Chief Executive shall prepare a Scheme of Delegation identifying his/her 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.
- 4.7 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director to provide information and advise the Board in accordance with statutory or Monitor requirements. Outside these requirements the roles of the Finance Director shall be accountable to the Chief Executive for operational matters.
- 4.8 The arrangements made by the Board as set out in the Schedule of Matters reserved to the Board and Scheme of Delegation shall have effect as if incorporated in these Standing Orders.
- 4.9 **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 as soon as possible.

5. COMMITTEES

- 5.1 Subject to the Constitution, (and to any guidance issued by the Department of Health applicable to Foundation Trusts or as may be given by the Monitor), the Trust may appoint committees of the Trust, or together with one or more 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 by 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.
- 5.5 The Board of Directors may appoint committees consisting wholly or partly of persons who are not executive directors or non-executive directors of the trust for any purpose that is calculated or likely to contribute to, or assist it in the exercise of its powers. It may delegate powers to such committees only if the membership consists wholly of directors.
- 5.6 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.
- 5.7 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.
- 5.8 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.
- The Trust Board of Directors shall establish an Audit Committee, Nomination and Appointments Committee, and a Remuneration Committee as standing Committees of the Trust Board of Directors. In addition, the Trust Board of Directors shall establish such other Committees as it deems necessary and appropriate from time to time.

6 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 **Declaration of Interests** - The Constitution, the 2006 Act and the Code of Conduct and Accountability 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;
 - 6.2.4 a position of trust in a charity or voluntary organisation in the field of health and social care;
 - 6.2.5 any connection with a voluntary or other organisation contracting for NHS services;
 - 6.2.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to, lenders or banks;
 - 6.2.7 interests in pooled funds that are under separate management;
 - 6.2.8 research funding/grants that may be received by an individual or their department;
 - 6.2.9 any other commercial interest in the decision before the meeting.
- 6.3 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 and recorded in the minutes of that meeting.
- 6.4 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.
- 6.5 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.6 There is no requirement in the Code of Conduct and Accountability for the interests of Board Directors' spouses or partners to be declared. However SO 7 requires that 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.
- 6.7 If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chair or the Secretary. 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.
- 6.8 **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 and other relevant and material interests which have been declared by both Executive and Non-Executive Directors, as defined in Standing Order 6.2.

- 6.9 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 6.10 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.
- 6.11 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.

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, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 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 he has 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 indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 7.4.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
or
- 7.4.2 he is a partner / associate 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;
- 7.4.3 and in the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 7.5 The Chair or a Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 7.5.1 of his membership of a company or other body, if he has 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 he is 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 indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and 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 he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his/her duty to disclose his/her interest.
- 7.7 This SO 7 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 he is 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 comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff". This section of Standing Orders should be read in conjunction with this document.
- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive or the Secretary of the fact that he is 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 his, 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 Standing Order 8 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 8 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 him 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 himself 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 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 9.1 **Custody of Seal** – The Common Seal of the Trust shall be kept by the Chief Executive or designated Officer in a secure place.
- 9.2 **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. Where it is necessary that a document be sealed, the seal shall be affixed in the presence of two Directors, one Director and the Secretary or two senior managers (not being from the originating department) duly authorised by the Chief Executive and shall be attested by them.
- 9.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating directorate).
- 9.4 **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 applications of the Trust seal shall be made to the Board at least quarterly. (The report shall contain details of the seal number, a description of the document and the date of sealing).

10 SIGNATURE OF DOCUMENTS

- 10.1 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.
- 10.2 The Chief Executive or nominated Officer(s) 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.

11 MISCELLANEOUS

- 11.1 **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.
- 11.2 **Documents having the standing of Standing Orders** – standing financial instructions (including provisions as to tendering and contract procedures, disposals and in-house services), Schedule of Matters reserved to the Board and Scheme of Delegation, the Policy on the Register of Interests and Hospitality and the Staff

Disciplinary and Appeals Procedures document shall be read in conjunction with the Standing Orders. The Board may also, from time to time, agree and approve policy statements / procedures which will apply to all or specific groups of staff employed by the Trust. The decision to approve such policies and procedures shall be recorded in an appropriate Trust Board minute to be read in conjunction with these Standing Orders.

- 11.3 **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Board and any requirements for amendments must be directed to the joint meeting with the Council of Governors unless paragraph 8.3.1 of Annex 9 applies. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 11.4 The Board may confirm contracts to purchase from a voluntary organisation or a local authority using appropriate powers under the 2006 Act and shall comply with procedures laid down by the Finance Director which shall be in accordance with this Act.

ANNEX 9

Further Provisions

1. Eligibility for Membership

- 1.1 An individual shall not be eligible for Membership of the Trust if he or she:
- 1.1.1 fails or ceases to fulfil the criteria for Membership of any of the constituencies;
 - 1.1.2 was formerly employed by the Trust or the Applicant NHS Trust and was dismissed for gross misconduct;
 - 1.1.3 was formerly employed by the Trust or the Applicant NHS Trust and in the preceding two years was lawfully dismissed other than by reason of redundancy;
 - 1.1.4 has been involved as a perpetrator in a serious incident of violence or abuse in the last five years at any of the Trust's Hospitals or against any of the Trust's staff members or Patients;
 - 1.1.5 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 1.1.6 does not agree to abide by the Trust values as set out in the Trust's Integrated Business Plan;
 - 1.1.7 has been identified as a vexatious complainant or has been excluded from treatment at any of the Trust's Hospitals due to unacceptable behaviour;
 - 1.1.8 is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust; or
 - 1.1.9 is under the age of seven (7) years
- 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 his 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 he ceases to live in the area of the Public Constituency of which he is 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 he is a Member he shall forthwith advise the Trust that he is no longer eligible to continue as a Member and the Trust shall forthwith remove his 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 he is 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 he is 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 of 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 him 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.

Patients and Carers Constituency

- 1.9 A Member of the Patients 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 Hospitals as a Patient or Carer, as the case may be, within the preceding three years.
- 1.10 Where in the reasonable opinion of the Trust an individual is no longer eligible to continue as a Member of the Patients and Carers Constituency it shall be at liberty to remove that individual from the Register of Members and that individual shall thereupon cease to be a Member of the Trust but this power may not be exercised until the Trust has given not less than 14 days written notice to that Member addressed to him at the address given in the Register of Members of its intention to remove him from the Register of Members and that Member has not within that period notified the Trust of his wish to continue as a Member and has provided proof satisfactory to the Trust of his continued eligibility.

2. Membership Termination of Tenure

- 2.1 A Member shall cease to be a Member if:-
- 2.1.1 they resign by notice in writing to the Membership Manager;
 - 2.1.2 they die;
 - 2.1.3 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 Patients and Carers or Staff Constituency;

- 2.1.4 they are expelled under this Constitution;
- 2.1.5 If it appears to the Membership Manager that they no longer wish to be involved in the affairs of the Trust as a Member, and after enquiries made in accordance with a process approved by the Council of Governors they fail to establish that they have a continuing wish to be involved in the affairs of the Trust as a Member;

3. Application for Membership

- 3.1 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 3.3 of this Annex 9.
- 3.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply
 - 3.2.1 the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;
 - 3.2.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Membership Manager at the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;
 - 3.2.3 unless the applicant is ineligible for Membership or is disqualified from Membership, the Membership Manager at the Trust shall cause his name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;
 - 3.2.4 upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a Member;
 - 3.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that member:
 - (a) his full name and title;
 - (b) his date of birth;
 - (c) his full postal address;
 - (d) his home telephone number (if any);
 - (e) his email address (if any);
 - (f) the constituency and class of which he is a Member;
 - (g) the date upon which he became a Member;
 - (h) his gender and ethnicity, and
 - (i) his affiliation to any health and social care group

provided that any of the information contained in paragraph 3.2.5 above shall only be made available to members of the public in accordance with the provisions of paragraph 33 of the Constitution;
- 3.3 Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:

- 3.3.1 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 him before inviting him 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 3.2.5 above;
- 3.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph 9 of the Constitution;
- 3.3.3 unless the individual has within 28 days of the date upon which the Trust dispatches its invitation to him to become a Member advised the Trust that he does not wish to become a Member, the Membership Manager shall thereupon enter that individual's name on the Register of Members and he shall thereupon become a Member provided that the Membership Manager has been provided with the information, if any, requested pursuant to paragraph 3.3.2 to enable it to complete the relevant entry in the Register of Members;
- 3.3.4 if the individual has failed to provide the information requested by the Membership Manager within 28 days of being invited by the Membership Manager to provide it in accordance with paragraph 3.3.2 above, the Membership Manager 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.
- 3.4 No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.
- 3.5 For the avoidance of doubt, an individual shall become a Member on the date upon which his name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which his name is removed from the Register of Members as provided for in this Constitution.
- 3.6 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 updated as soon as reasonably practicable and in any event within 14 days of receipt of any new or amended information.
- 3.7 Where in the reasonable opinion of the Trust a Member is no longer eligible or is disqualified from Membership of the Trust it shall be entitled, subject to paragraph 8.1, to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the Member addressed to him at the address given in the Register of Members of its intention to remove him from the Register and that Member has not within that period notified the Trust of his wish to continue as Member and provided proof satisfactorily to the Trust of his continued eligibility.
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 except for in the first year following Authorisation. The Annual Members' Meeting shall be open to members of the public.
- 4.2 Any Members' Meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".
- 4.3 Special 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, but not 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 either an Annual Members' Meeting or a Special Members' Meeting.

- 4.4 All Members' Meetings are to be convened by order of the Board of Directors.
- 4.5 The Board of Directors may:
- (a) decide where the Annual Members' Meeting and/or a Special Members' Meeting is to be held and may also for the benefit of the Members arrange for the Annual Members' Meeting to be held in different venues each year;
 - (b) make provision for the Annual Members' Meeting and/or a Special Members' Meeting to be held at different venues simultaneously or at different times. In making such provision the Board of Directors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall be not less than the quorum set out in paragraph 3.25 of Annex 7 of this Constitution.
- 4.6 The Board of Directors shall present to the Members at the Annual Members' Meeting: -
- 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; and
 - 4.6.5 any other reports or documentation it considers necessary or otherwise required by Monitor or the 2006 Act, including the annual accounts, any report of the auditor and the annual report.
- 4.7 The Trust shall give notice of the Annual Members' Meeting or a Special 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;
 - 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 Members' Meeting or a Special Members' Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting,
- at least 14 clear days before the date of the meeting.
- 4.8 The Chair or in his absence the Deputy Chair shall preside at all Annual Members' Meetings and Special Members' Meetings of the Trust. If neither the Chair nor the Deputy Chair is present, the Governors present shall elect one of their number to be Chair of either an Annual Members' Meeting or a Special Members' Meeting 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 either an Annual Members'

Meeting or a Special Members' Meeting, the Members present and entitled to vote shall choose one of their number to be Chair.

5. Board of Directors: Disqualification

5.1 In addition to the grounds of disqualification set out in Paragraph 31 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, he no longer satisfies the relevant requirements for appointment;
- 5.1.2 he is a person whose tenure of office as a chair or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
- 5.1.3 he has 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 Criminal Records Bureau check is such that it would be inappropriate for him 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, he is no longer employed by the Trust;
- 5.1.6 he is a person who has had their name removed by a Direction under section 154 of the 2006 Act from any list prepared under Part 4 of that Act, and have not subsequently had their name included on such a list;
- 5.1.7 he is an executive or non-executive director of another NHS Foundation Trust, or a governor, non-executive director, Chair, Chief Executive Officer of another Health Service Body or a body corporate whose business includes the provision of healthcare;
- 5.1.8 he is a member of a patient and public involvement forum;
- 5.1.9 he is a member of a local authority's overview and scrutiny committee;
- 5.1.10 he is the subject of a disqualification order made under the Company Directors' Disqualifications Act 1986;
- 5.1.11 he has failed or refused to undertake any training which the Board of Directors requires all Directors to undertake;
- 5.1.12 he has failed to sign and deliver to the Secretary in the form required by the Board of Directors confirmation that he accepts the Code of Conduct of NHS Managers;
- 5.1.13 he/she is a partner or spouse of an existing Director.

6. Governors and Directors: Communication and Conflict

6.1 Summary

6.1.1 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 communications, and sets out the formal

arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

6.2 Informal Communications

6.2.1 Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.

6.2.2 The Chair shall use his reasonable endeavours to encourage effective informal methods of communication including:-

- (a) participation of the Board of Directors in the induction, orientation and training of Governors;
- (b) development of special interest relationships between Non-Executive Directors and Governors;
- (c) discussions between Governors and the Chair and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer;
- (d) involvement in Membership recruitment and briefings at public events organised by the Trust.

6.3 Formal Communication

6.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

6.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows; -

- (a) specific requests by the Council of Governors will be made through the Chair to the Board of Directors;
- (b) 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 his 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;
- (c) joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate.

6.3.3 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.

6.3.4 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:-

- (a) the Board of Directors proposals for the Strategic Direction and the Annual Business Plan;
- (b) the Board of Directors' proposals for developments;
- (c) Trust performance;

- (d) involvement in service reviews and evaluation relating to the Trust's services; and
 - (e) proposed changes, plans and developments for the Trust other than may be covered by paragraph 6.3.2 above.
- 6.3.5 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.
- 6.3.6 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:-
- (a) attendance by the Board of Directors at a meeting of the Council of Governors;
 - (b) provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors;
 - (c) inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
 - (d) reporting the views of the Council of Governors to the Board of Directors through the Chair or Deputy Chair.

7. Resolution Of Disputes

7.1 Dispute Resolution between Board of Directors and Council of Governors

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

- 7.1.1 The Chair, or Deputy 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.
- 7.1.2 Failing resolution under 7.1.1 above then the Chair shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to clearly and concisely produce a recommendation statement to the Council of Governors and Board of Directors with a view to resolving the dispute (the "Recommendation Statement").
- 7.1.3 The Chair shall ensure that the Recommendation Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of both the Board and Council.
- 7.1.4 If the matter remains unresolved or only partially resolved then the procedure outlined in 7.1.1 above shall be repeated.
- 7.1.5 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair), and following the further discussions prescribed in 7.1.4, 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 Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly.
- 7.1.6 On the satisfactory completion of this disputes process the Board of Directors shall implement agreed changes.

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

7.2 Nothing in this procedure shall prevent the Council of Governors from making a referral to the Panel in accordance with paragraph 20 of this Constitution.

8. Other Disputes

8.1 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 Secretary (or such other office of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

8.1.1 The Secretary (or his nominated representative) shall:

- (a) review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Secretary considers appropriate;
- (b) then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and
- (c) communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

8.1.2 If the Member is aggrieved of the decision of the Secretary pursuant to paragraph 8.1.1 above, he may appeal in writing to the Council of Governors within 14 days of the Secretary's decision. The Council of Governors' decision is to be final

8.1.3 Where a Governor is declared ineligible or disqualified from office or his term of office as a Governor has been terminated (otherwise than as a consequence of his own resignation) and that person disputes the decision, he shall as reasonably practicable be entitled to attend a meeting with the Chair and Chief Executive of the Trust, who shall use their reasonable 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.

8.2 Review of Process

8.2.1 The arrangements in paragraph 8.1 above will apply for twelve months from the date of establishment of the Trust. At or about the end of that period, the Trust shall arrange a joint meeting of the Council of Governors and the Board of Directors to assess communications between them over that period, and consider any changes to this procedure that might assist resolution in the event of a conflict between them.

8.3 Amendment of the Constitution

8.3.1 The Trust may make amendments of its Constitution in accordance with paragraph 45 of this Constitution.

8.3.2 The Constitution shall be reviewed annually.

8.3.3 The Constitution shall be reviewed on the first anniversary of the Trust's Authorisation or as soon as reasonably practicable thereafter. Further review dates shall be established at that time.

8.4 Indemnity

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

8.5 Validity of Actions

8.5.1 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.